

**CONSOLIDATED SECOND AMENDMENT TO PARKING AGREEMENT
BETWEEN THE CITY OF AUSTIN AND
AMLI AUSTIN RETAIL, L.P., AND NEW PARKING & VALIDATION AGREEMENT
BETWEEN THE CITY OF AUSTIN, AMLI AUSTIN RETAIL, L.P., PPF AMLI 421
WEST 3rd STREET, L.P. AND AMLI DOWNTOWN AUSTIN, L.P.**

This "Consolidated Second Amendment and New Parking & Validation Agreement" ("Second Amendment") is executed by and between the **City of Austin**, a Texas home-rule municipal corporation situated in Hays, Travis and Williamson Counties, acting by and through its duly authorized City Manager or his designee ("City"), and **AMLI Austin Retail, L.P.**, a Texas limited partnership ("AMLI Retail") as to the Second Amendment to Parking Agreement; and, by and between the City, AMLI Retail, **AMLI Downtown Austin, L.P.**, a foreign limited partnership authorized to do business in the State of Texas ("AMLI Downtown") and **PPF AMLI 421 West 3rd Street, L.P.**, a foreign limited partnership authorized to do business in the State of Texas ("AMLI 421") regarding a new parking and validation agreement. The "Effective Date" of this Second Amendment is April 1, 2011.

RECITALS

In April of 2005, the City and AMLI Retail entered into a "Parking Agreement" ("AMLI Retail Parking Agreement") pursuant to a "Disposition and Development Agreement" which assigned retail subleases in Blocks 2 and 4 of the Original City of Austin, excluding the Schneider Building on Block 2 to AMLI Retail. A copy of the AMLI Retail Parking Agreement is attached to this Second Amendment as Exhibit "A", and incorporated as though fully set forth herein. Many terms are defined in that Agreement and subsequently used in this Second Amendment in initial capital letters. The AMLI Retail Parking Agreement set out the parking privileges in the City Hall garage ("Block 3") for retail patrons, retail employees, and valet operations connected with retail businesses in Blocks 2 and 4. The validation privileges contained in the AMLI Retail Parking Agreement, however, were set to expire on December 31, 2010.

In addition, in December 2005 the City entered into a Validation Agreement with AMLI Downtown ("AMLI Downtown Validation Agreement"), setting forth parking privileges in the City Hall garage for retail patrons connected with retail businesses in Block 20. The term of the AMLI Downtown Validation Agreement, which provided free weekday 2-hour parking validations in the City Hall garage, was set to expire on December 31, 2010. The City authorized a ninety (90) day extension through March 31, 2011. The AMLI Downtown Validation Agreement will be allowed to expire, and a new validation program (the "Validation Program") will be set out in this Second Amendment, including Block 20. The new Validation Program will include City Hall garage parking validations for retail patrons from Block 20 and Block 22.

On December 16, 2010, the City Council authorized the negotiation and execution of an amended parking agreement with AMLI Retail, AMLI Downtown and AMLI 421 ("the Related

AMLI Entities” or individually, a “Related AMLI Entity” or “Developer”¹) regarding the 2nd Street District and reciprocal validation privileges between the City and the Related AMLI Entities. In addition, the City, AMLI Retail and AMLI Downtown executed an amendment (“First Amendment”) extending the current Validation Program for one ninety (90) day period through March 31, 2011, while this Second Amendment was being finalized. A copy of this First Amendment is attached to this Second Amendment as Exhibit “C”.

Under this Second Amendment, all of the Related AMLI Entities will mirror the parking Validation Program (but not provisions relating to valet parking or employee parking) in their parking garages on Blocks 20 and 22 that the City agrees to provide to the Related AMLI Entities while their retail patrons park in the City Hall parking garage on Block 3 (“City Hall Parking Garage”). The City and the Related AMLI Entities (the “Parties”) will coordinate operations of the parking garages on Blocks 3, 20, and 22 (“2nd Street District Parking”) to facilitate clear, consistent public communication regarding 2nd Street District Parking opportunities. The Parties intend for this Second Amendment to set forth the terms and conditions for three (3) programs: 1) a Validation Program between the Parties; 2) a valet parking agreement; and, 3) an agreement for the Retail Project's employee parking. The Parties' goal is to have the Validation Program eventually apply to all retail businesses in the 2nd Street District.

The Parties agree to replace Sections 1.2(C), 2.1 through 2.9, 2.11, 2.12, Article 3, Section 5.1, and Section 5.28 of the Agreement with the following provisions of this Second Amendment:

1.2 Description of the Underlying Agreements and the Disposition and Development Agreement.

* * *

- (C) The Retail Project. Developer has developed the 2nd Street District for uses including retail (which term includes restaurant use), and multi-family uses. The Related AMLI Entities have developed multi-family and mixed use projects on Block 22 and Block 20. The City desires that the City Hall Retail Space be incorporated into the 2nd Street District, although ownership of the City Hall Retail Space will remain with the City. The development of the Property, the retail spaces on Blocks 20 and 22 and the City Hall Retail Space is collectively referred to as the “Retail Project”. The portion of the Retail Project that relates solely to the Property is referred to as the “Block 2 and 4 Retail Project”. Retail and restaurant businesses located within the Retail Project are collectively referred to in this Agreement as the “Retail Businesses”, and individually as a “Retail Business”. An employee of a Retail Business is referred to as a “Retail Employee”.

¹ The Parties agree that the rights and obligations of the “Developer” as applied to AMLI Downtown and AMLI 421 are limited to the Parking Agreement and this Second Amendment, and not the “Disposition and Development Agreement” as amended or any other agreement(s) between the Parties.

ARTICLE 2
AGREEMENT CONCERNING THE PARKING GARAGE

- 2.1 Term of this Amendment. This Second Amendment is effective on April 1, 2011 (“Effective Date”) and will expire on December 31, 2017 (“Expiration Date”). Unless and until the Parties enter into a written agreement extending the term of this Second Amendment beyond the Expiration Date, then the term of this Agreement will expire on the Expiration Date.
- (A) At any time during the during the one hundred eighty (180) calendar days before the Expiration Date, the Related AMLI Entities may request that the City enter into good faith negotiations to extend the term of this Second Amendment.
 - (B) The City and Related AMLI Entities must negotiate in good faith to renew the term of this Second Agreement for one hundred eighty (180) days after the date of the request from the Related AMLI Entities to the City.
 - (C) If at the end of the one hundred eighty (180) day periods, the City and Related AMLI Entities have not reached an agreement, then neither of them will be required to negotiate after the end of the one hundred eighty (180) day period, although nothing prevents them from doing so if both Parties wish to continue negotiating.
 - (D) Unless and until the City and Related AMLI Entities enter into a written agreement extending the term of this Second Amendment beyond the Expiration Date, then the terms of this Agreement will expire on the Expiration Date.
- 2.2 Description of the 2nd Street District Parking Garages (collectively in this Second Amendment, the “2nd Street District Parking Garages”):
- (A) Block 3. The parking garage under City Hall is referred to in this Second Amendment as the “City Hall Parking Garage” or the “Parking Garage” in the original Agreement. A drawing of the City Hall Parking Garage is attached to the Agreement as Exhibit “B,” showing the approximate layout of the City Hall parking Garage.
 - (B) Block 20. AMLI Downtown is the owner of this block and associated parking facility.
 - (C) Block 22. AMLI 421 is the leaseholder of this city block and associated parking facility.
 - (D) Each 2nd Street District Parking Garage is subject to physical modification by the owner of that parking garage if the owner of that parking garage believes, in its sole and absolute discretion, that those physical modifications are in the best interests of that owner.

- 2.3 Mechanical Devices: The Parties will purchase and install (or will cause to be installed, at no expense to any other party to this Second Amendment) all equipment for the operation of their parking garage(s), including, without limitation, a park and pay station at the entrance to the public parking portion of that party's parking garage. A party may change the location of their park and pay station if the party believes, in the exercise of its sole and absolute discretion, that that change is in the 2nd Street District's best interests.
- (A) The Related AMLI Entities will purchase and install parking validation equipment that is able to recognize and use the validation technology installed in the City Hall Parking Garage.
- (B) The Parties agree to coordinate procurements of mechanical devices if the City Hall Parking Garage validation technology changes in the future requiring the Parties to update the parking validation equipment.
- 2.4 Days and Hours of Operation: Beginning on the Effective Date of this Second Amendment, the Parties will cause the 2nd Street District Parking Garages to be open every day during certain hours. At this time, the Parties anticipate that the 2nd Street District Parking will open at or about 5:45 a.m. and will close at or about 2 a.m. Section 2.4 does not obligate a Party to have employees in the park and pay station in the 2nd Street District Parking Garages during the hours in which 2nd Street District Parking is open. The Parties may alter the days and times set forth in the preceding sentence if a Party decides to do so, in the exercise of its sole and absolute discretion. However, the Parties acknowledge and agree that to the extent economically and operationally feasible, they will take into account the needs of the 2nd Street District in setting those hours.
- 2.5 Public Parking; Validation: Public parking is parking that is available to anyone at any time, as long as that person pays the fee for public parking established by the owner or operator of the parking garage and spaces are available. If a Party turns away a retail customer desiring validated parking in that Party's parking garage due to space limitations in that Party's parking garage, the Parties agree the turning away of the retail customer under these circumstances does not constitute a breach of, nor a default or an event of default under, the AMLI Retail Parking Agreement or this Second Amendment. The Parties agree that in operating a parking garage in a reasonable manner, a parking garage is considered to have reached its capacity when there may be unfilled parking spaces in the parking garage, in order to keep spaces available for persons who are entitled to use those unfilled spaces and who are likely to use those spaces in the immediate future.
- (A) The Related AMLI Entities acknowledge that the City may not be able to make the specified number of spaces available for public parking during the Parking Increment due to a number of factors, including the number of City employees working late on a week day or working on weekends and the number of City staff, officials and citizens attending meetings – not just City Council meetings – held in City Hall. Nothing in this Second Amendment limits access to or use of the City Hall Parking Garage by City employees working at City Hall or impairs the City's right to schedule meetings or functions at City Hall. In addition, AMLI

Downtown and AMLI 421 each agree that the Block 20 parking garage and the Block 22 parking garage, as applicable, will contain the total number of parking spaces required under site plans which are approved under Title 25 (Land Development) of the City Code and which are then in effect, as such site plans may exist from time to time.

- (B) The City acknowledges that AMLI Downtown and AMLI 421 operate a mixed use parking garage on Block 20 and Block 22, respectively, and have obligations to their residents, retail tenants, and other persons or entities under other contractual arrangements. AMLI Downtown and AMLI 421 may not be able to make their entire public parking stock available for public parking during Standard Days and Council Meeting Days due to a number of factors, including the number of residents, retail tenants or certain other persons or entities using the parking garage(s) at a given time. Nothing in this Second Amendment limits access to or use of the Block 20 or Block 22 parking garage by AMLI Downtown or AMLI 421's residents, retail tenants or other persons or entities with contractual obligations involving the parking garages on Block 20 or Block 22. In addition, the City agrees AMLI Downtown and AMLI 421 may place validated parkers anywhere within their respective parking garages, and AMLI Downtown and AMLI 421 can change the locations which AMLI Downtown and AMLI 421 use for validated parkers from time to time in AMLI Downtown and AMLI 421 sole and absolute discretion.
- (C) There are six (6) separate days and times for the City Hall Parking Garage, that are described below (each of which is sometimes referred to as a "Parking Increment"):
- 1) "Council Meeting Days;" 2) "Council Meeting Evenings;" 3) "Standard Days;" 4) "Standard Evenings;" 5) "Weekend Days;" and 6) "Weekend Evenings." The City acknowledges and agrees that to the extent economically and operationally desirable, it will take into account the needs of the Retail Project in setting the days and times for parking. The number of parking spaces specified below for each Parking Increment is the City's best estimate of the number that will be available for public parking during the Parking Increment:
- (1) Council Meeting Days. Are from 9:00 a.m. until 6:00 p.m. on those days during which the City Council of the City of Austin is scheduled to meet. Currently, Council Meetings Days are Thursdays, but those days are subject to change and expansion to more than one day at any time. There are two hundred forty five (245) parking spaces in the City Hall Parking garage that are available for public parking.
 - (2) Council Meeting Evenings. Are from 6:00 p.m. until the closing time set by the City on those evenings during which the council meeting of the City of Austin is scheduled to meet. There are two hundred forty five (245) parking spaces in the City Hall Parking garage that are available for public parking.

- (3) Standard Days. Are from 9:00 a.m. until 6:00 p.m., Monday through Friday, excluding Council Meeting Days. There are two hundred forty five (245) parking spaces in the City Hall Parking garage that are available for public parking.
 - (4) Standard Evenings. Are from 6:00 p.m. until the closing time set by the City, Monday through Thursday evenings, *excluding* Council Meeting Evenings. There are three hundred fifty (350) parking spaces in the City Hall Parking garage that are available for public parking.
 - (5) Weekend Days. Are from 9:00 a.m. until 6:00 p.m. on Saturdays and Sundays. There are three hundred fifty (350) parking spaces in the City Hall Parking garage that are available for public parking.
 - (6) Weekend Evenings. Are Friday, Saturday and Sunday nights from 6:00 p.m. until the closing times set by the City (which may vary depending on the night). There are three hundred fifty (350) parking spaces in the City Hall Parking garage that are available for public parking.
- (D) The Parties will set the rates for their respective parking garage(s). The Parties make no representations or warranties regarding the rates or frequency with which rates for parking may be changed.
 - (E) The Parties shall not charge each other or any Retail Business in the Retail Project any fee for the parking Validations contemplated in this Second Amendment. Each Party is entitled to charge any other person or entity (including the owner of Block 21 or the owner of the Schneider Building, but not including one of the other Parties to this Second Amendment) for the parking Validations contemplated in this Agreement.
 - (F) The Parties shall use their best efforts to negotiate and maintain separate agreements with the Block 21 and historic Schneider Building owners to establish a charge or fee for parking validations granted by these retail business tenants on Block 21 and in the historic Schneider Building.
 - (1) The Parties shall use their best efforts to negotiate, enter into and maintain a separate agreement with the historic Schneider Building owner within sixty (60) days of execution of this Second Amendment to establish a parking validation agreement consistent with the Validation Program set forth herein.
 - (2) The Parties shall use their best efforts to negotiate, enter into a separate agreement with the Block 21 owner within one hundred twenty (120) days of execution of this Second Amendment to establish a parking validation agreement consistent with the Validation Program set forth in this Second Amendment.

(G) The Parties agree to provide a two (2) hour Validation for retail patrons (which include restaurants) of the Retail Project during Standard Days and Council Meeting Days. All Parties will keep this validation period consistent during the term of this Second Amendment. The Parties may alter or modify the validation agreement or may require a different validation arrangement, and will memorialize any alteration or modification in a writing signed by all Parties. The Related AMLI Entities are not and shall not be obligated to provide Validation for retail patrons of the Retail Project beyond the hours of 9:00 a.m. to 6:00 p.m., Monday through Friday unless the Related AMLI Entities agree to do so in a separate written agreement.

- (1) Validation Devices. All Parties will use best efforts to cause all Retail Businesses which sign leases after the date of this Second Amendment to purchase validation devices specified by the City. These validation devices are currently in the shape of a clam shell and will be referenced as a "Clamshell." A Clamshell electronically encrypts the amount of free parking to which the person receiving the Validation is entitled to onto the ticket. The amount of free parking that may be encrypted onto any parking ticket is limited by the terms of 2.5(E)(2), below.
- (2) Validation Rights and Privileges. Validations may only be given to 2nd Street District customers who enter a 2nd Street District Parking garage before 6:00 p.m. on any Standard Weekday or Council Meeting Day. The maximum amount of time that can be validated is two (2) hours. This time period is referred to as the "Validation Period." A customer is limited to a single Validation for any one parking ticket, regardless of the number of Retail Businesses in the 2nd Street District the customer patronizes. If the customer parks in any 2nd Street District Parking Garage for longer than the Validation Period, the customer will be required to pay as if the customer entered the 2nd Street District Parking Garage immediately after the end of the Validation Period.
- (3) Retailer Must Limit Validations to Customers while Shopping in 2nd Street District. The Parties shall include in all leases with Retail Businesses after the date of this Second Amendment specific prohibitions against giving Validations to anyone who is not patronizing a Retail Business at the time it gives a Validation and against giving multiple Validations. The Parties shall diligently and in good faith enforce these prohibitions. Any violation of this Section 2.5 by a Retail Business shall constitute an event of default under this Second Amendment. The City acknowledges that there are retail leases currently in place in Block 20 and Block 22 which do not include specific prohibitions against giving Validations to anyone who is not patronizing a Retail Business. The Related AMLI Entities shall seek to have such Retail Businesses agree to such prohibitions, but the Related AMLI Entities are not obligated to require such Retail Businesses to sign amendments to existing leases.

- (4) “Validation” as used in this Second Amendment, means any method that allows a customer of a Retail Business to park in the public parking area of a 2nd Street District Parking Garage.
- (H) The Parties acknowledge that participation by all of the 2nd Street District property owners is important to a uniform and consistent experience for 2nd Street District retail customers, and the Parties will use their best efforts to enter into and maintain validation agreements with other retail lessors on Block 21 and in the historic Schneider Building to assure they also participate in the 2nd Street District Validation Program (as described in Section 2.5(F) above).
- (1) The Parties' goal is for all separate agreements regarding the Validation Program for the 2nd Street District to be effective through December 31, 2017, the Term of this Second Amendment.
- (2) The Parties will use their best efforts to negotiate than any rates charged to the retail business lessors on Block 21 and in the historic Schneider Building for parking validations shall be reviewable annually during the last sixty (60) days of each calendar year beginning during the 2011 calendar year to set the rate for the next calendar year. If the Parties are unable to reach agreement on the validation rates for a successive calendar year by December 15th of each year, the Parties will use their best efforts to have such proposed rate changes mediated by a neutral third party agreeable to both parties to the proposed rate change in order to maintain a Validation Program for the entire 2nd Street District..
- (3) The City and the Related AMLI Entities agree to keep each other apprised of any year-end validation rate negotiations with the other retail lessors on Blocks 2 and 21.
- (4) Should one of the retail lessors on Block 21 or the historic Schneider Building fails (or if all retail lessor on Block 21 or the historic Schneider Building fail) to enter into a separate parking and validation agreement with the City or Related AMLI Entities, or if any one or more of the agreements with the retail lessor on Block 21 or the historic Schneider Building is terminated for any reason, then in any such case this Second Amendment shall not be affected, and the Validation Program, the valet parking, and the employee parking program shall remain in effect.
- (I) The Parties agree to negotiate in good-faith to implement and enter into a separate agreement regarding consistent exterior identifying signage for their respective parking garages within one hundred twenty (120) days of the execution of this Second Amendment. The separate agreement will address the Parties’ rights and responsibilities regarding the following:

- (1) The Parties shall use their best efforts to include an approved conceptual design of any proposed exterior identifying signage as an exhibit to the agreement;
- (2) The approval process for any proposed exterior identifying signage;
- (3) The manner in which the proposed exterior identifying signage will be installed and which Party to the agreement will be responsible for the cost involved with installing such exterior identifying signage;
- (4) What, if any services (*i.e.*, electricity, etc.) are necessary for the proposed exterior identifying signage, and which Party will be responsible for the expense of such service(s); and,
- (5) The rights of a Party to reimbursement from another if one Party buys all of the necessary exterior identifying signage from one vendor for consistency in the manufacturing process.

2.6 Valet Parking. In addition to the public parking, the City will permit valet parking from the Retail Project in the City Hall Parking Garage, subject to the following terms and conditions:

- (A) Valet Parking Operator. The Related AMLI Entities may contract with a valet parking operator to use the City Hall parking Garage for storage of valet-parked vehicles. The City must approve the valet parking operator and contract before the valet parking operator may use the City Hall Parking Garage.
 - (1) The thirty (30) day period after the Related AMLI Entities delivers a proposed valet parking contract to the City for the City's review is referred to as the "Valet Contract Review Period".
 - (2) During the Valet Contract Review Period, the City may approve or disapprove of a valet contract or extend the Valet Contract Review Period by fifteen (15) days.
 - (3) If the City does not respond at all by the end of the applicable Valet Contract Review Period (*i.e.*, 30 or 45 days), then the City will be deemed to have approved of the proposed valet contract and the Related AMLI Entities may enter into the proposed valet contract with the proposed valet parking operator, upon the same terms and conditions in the contract submitted to the City for its review.
 - (4) If there are any changes to the contract, then the Related AMLI Entities must again submit the contract to the City for the City's review.

- (B) Number of Parking Spaces for Valet Parking. The Parties agree that the City will provide the following number of valet parking spaces for all of the Related AMLI Entities during the following Parking Increments:
- (1) Council Meeting Days. The City will provide between twenty (20) and fifty(50) valet parking spaces.
 - (2) Council Meeting Evenings. The City will provide between thirty (30) and one hundred ten (110) valet parking spaces.
 - (3) Standard Days. The City will provide between twenty (20) and fifty (50) valet parking spaces.
 - (4) Standard Evenings. The City will provide between thirty (30) and one hundred thirty five (135) valet parking spaces.
 - (5) Weekend Days. The City will provide between thirty (30) and one hundred thirty five (135) valet parking spaces.
 - (6) Weekend Evenings. The City will provide between thirty (30) and one hundred thirty five (135) valet parking spaces.
- (C) Procedure for Changing the Number of Valet Parking Spaces. The Related AMLI Entities shall notify the City in writing, specifying the total number of increased or decreased valet parking spaces it believes is necessary for any given Parking Increment. If the request exceeds the maximum number of spaces for any given Parking Increment, the City shall not be obligated to consider the request.
- (1) The Parties acknowledge there are less valet parking spaces available during the Council Meeting Days and Standard Days due to layout and operational issues.
 - (2) If the Related AMLI Entities request more valet parking spaces than the maximum number set forth in the Council Meeting Day or Standard Weekday Parking Increments, the City shall consider the request and may grant or withhold its approval in its sole and absolute discretion.
 - (3) If the request is for less that or equal to the maximum number of valet parking spaces for a particular Parking increment, the City will review the request from the AMLI Related Entity, and within thirty (30) days after the request, propose an increase or decrease in the number of valet parking spaces for each applicable Parking Increment.
 - (4) If either the City or an AMLI Related Entity believes that the Related AMLI Entities need less than the valet parking spaces allocated during any or all of the Parking Increments, then that Party may deliver written notice to the other Parties of that belief, specifying how many valet parking

spaces should be provided during each of the Parking Increments for which the Party believes a change is appropriate.

- (i) In the notice, the Party requesting the decrease in valet parking spaces must set a proposed date and time for a meeting concerning this matter, which meeting cannot be set for less than ten (10) days after the date of the notice.
 - (ii) The Parties agree to work diligently and in good faith at that meeting to determine the number of valet parking spaces that are necessary for each Parking Increment for which the requesting Party believes a change is appropriate.
- (5) The Parties acknowledge the City may propose less than the number of valet parking spaces requested by the AMLI Related Entity, and the City's proposal shall include any increase or decrease in fee for the proposed number of valet parking spaces.
- (6) The Related AMLI Entities may elect not to increase the number of valet parking spaces, based on the City's proposal, but must make its election within ten (10) days.
- (7) If the Related AMLI Entities do not make an election within the ten (10) day period, the Related AMLI Entities will be deemed to have accepted the City's proposal.
- (8) The Related AMLI Entities may not make more than one request in any one sixty (60) day period.
- (D) Location of Valet parking Spaces. The City will designate the area of the City Hall Parking Garage that the valet parking operator may use to store valet-parked vehicles. It is possible that the area will not be exclusively used for storage of valet-parked vehicles. The valet parking operator may stack cars in areas that are designated as being for the exclusive use of the valet parking operator, but may not do so in any other areas of the City Hall Parking Garage.
- (E) Valet Parking Times. The valet parking operator cannot leave valet-parked vehicles in the City hall Parking Garage after the end of the last Parking Increment for that day.
 - (1) The evening Parking Increment may extend into the early morning of the next day, but is still the evening Parking Increment for the day during which it began.
 - (2) By no later than the end of each last Parking Increment for each day, the valet parking operator must move any valet-parked vehicle to another location and provide the City with contact information for obtaining return of the vehicle.

- (3) The City does not assume any responsibility for helping customers obtain vehicles moved to another location.
- (F) Cost of Valet Storage. The Parties agree the City shall charge a monthly fee for valet storage during each Parking Increment determined by multiplying the number of parking spaces allocated for valet parking during each Parking increment.
- (1) Council Meeting Days. \$10.00 per month;
 - (2) Council Meeting Evenings: \$10.00 per month;
 - (3) Standard Days: \$25.00 per month;
 - (4) Standard Evenings \$25.00 per month;
 - (5) Weekend Days. \$25.00 per month; and,
 - (6) Weekend Evenings \$25.00 per month.
- The City may change the valet storage rate at any time upon proper notice and may set the valet storage rate as the City deems appropriate.
- (G) Use Limited to Patrons of 2nd Street District. The valet parking operator shall make commercially reasonable efforts not to provide valet parking in the City Hall Parking Garage for any non-2nd Street District customer, including without limitation office workers or hotel occupants who are not patrons of a Retail Business in the 2nd Street District.
- (H) Valet Service. The valet parking operator must ensure that its employees are required to comply with the City Hall Parking Garage rules and regulations, including those addressing stacking, speed, direction of traffic, and right of way.
- (1) At the end of each Parking Increment, if an area of the City Hall Parking Garage has been identified as the exclusive use of the valet parking operator, the valet parking operator must ensure that at the end of time of exclusive use, that area of the City Hall Parking garage is neat and clean, with all litter, trash, and garbage removed.
 - (2) If the valet operator stores valet-parked cars in an area that is not exclusive, then the valet parking operator must ensure that its parking attendants do not leave litter, trash, or garbage within that parking area, but is not otherwise responsible for keeping the shared area neat and clean.
 - (3) The City may require that a valet parking operator cease using a particular attendant within the City Hall Parking Garage without being obligated to give a reason for that requirement.
- (I) Insurance and Indemnification. In order to be able to use the City Hall Parking Garage for valet storage, the valet parking operator must provide indemnities for the benefit of the City that are acceptable to the City in its sole and absolute

discretion and comply with the insurance requirements attached to this Second Amendment as Exhibit "C", and incorporated as though fully set forth herein.

- (J) City's Right to Terminate Valet Parking Operator's Use of City Hall Parking Garage. The Related AMLI Entities are responsible for ensuring the valet parking operator's compliance with City Hall Parking Garage rules and regulations. If the City believes a term or provisions of the valet parking rules is not being complied with, the City may send a written notice to the Related AMLI Entities identifying the issue the valet parking operator is failing to follow.
 - (1) If the City sends six (6) or more notices of non-compliance within an annual period, the City may refuse to allow the valet parking operator from further using the City Hall Parking Garage.
 - (2) If the City terminates the Related AMLI Entities' valet parking operator from using the City hall Parking garage, the Related AMLI Entities will be permitted to propose a new valet parking operator in accordance with the terms of Section 2.6(A), above.
- (K) Valet Parking Charges. The Related AMLI Entities are entitled to pass through valet parking charges to any person or entity (other than the City), or to charge any person or entity for valet parking (other than the City, in the sole discretion of the Related AMLI Entities or any Related AMLI Entity).
- (L) No Obligation of Related AMLI Entities. The Related AMLI Entities have and shall have no obligation to provide valet parking in the Block 20 parking garage or the Block 22 parking garage.

2.7 Retail Employee Parking. The Related AMLI Entities will be entitled to have a certain number of Retail Employees to park in the area of the City Hall Parking Garage that is only accessible by automatic vehicle identification ("AVI") devices, and is designated as being, in whole or in part, for Retail Employees.

- (A) The City may enforce its rights under this Second Amendment against the Related AMLI Entities, the Retail Employee, and even, under certain circumstances, the Retail Business that employs the Retail Employee.
- (B) The City grants the Related AMLI Entities with ninety (90) AVIs for the Retail Employees on Blocks 2, 4, 20 and 22.
- (C) The Related AMLI Entities must provide the City with the name of the Retail Employee, the Retail Employee's workplace, and the make, model, type, and license plate of the vehicle(s) that will use the AVI.
- (D) If a Retail Employee is temporarily driving a vehicle that has not been described in information provided to the City, then that Retail Employee must follow the

rules and regulations, notify the City of this temporary change and check in with the parking office.

- (E) If a Retail Employee does not notify the City of any changes regarding vehicles with AVIs, the City may refuse to recognize the AVI and may demand the Related AMLI Entities return the AVI or provide the City with updated information.
- (F) Background Checks. The Related AMLI Entities must include a certified statement that it has conducted a 10-year criminal history check for the Retail Employee being given an AVI. This certification must also include a statement that the Related AMLI Entities' checks do not show that the applicable Retail Employee has been convicted of a felony of violence.
 - (1) The Related AMLI Entities must retain the results of criminal history checks on Retail Employees in its files during the term of this Second Amendment.
 - (2) The Related AMLI Entities must deliver to the City a copy of all criminal backgrounds checks and efforts to attempt missing background checks within ten (10) days after the City delivers a written request for that information to the Related AMLI Entities.
- (G) AVI Only To Be Used During Work Shift; Prohibition Against Sharing. Any Retail Employee who receives an AVI may only use them while they are working at the Block 2, 4, 20 or 22 Retail Business. Retail Employees may not park in the area of the City Hall Parking Garage that is designated for public parking, unless expressly directed to do so by the staff of the City Hall Parking Garage (including the staff of the City Hall Parking Garage operator).

Retail Employees are prohibited from sharing AVIs.

- (H) Right To Use AVI Terminates Upon Termination Of Status As Retail Employee. If a Retail Employee ceases to be an employee of a Retail Business on Block 2, 4, 20 or 22, then an "AVI Termination Event" will be deemed to have occurred and all rights and privileges of the former Retail Employee to use the AVI or park in areas of the City Hall Parking Garage designated for Retail Employees will automatically terminate.
 - (1) The Related AMLI Entities must notify the City of the occurrence of each AVI Termination Event within seven (7) days after the AVI Termination Event and return the applicable AVI to the City within ten (10) days after the AVI Termination Event occurs.
 - (2) If the Related AMLI Entities do not comply with these requirements, the Related AMLI Entities shall forfeit the AVI Deposit for that particular AVI, although the total number of AVIs to which the Related AMLI Entities are entitled will not be reduced as a result of any forfeiture.

- (I) Deposits. For each AVI issued, the Related AMLI Entities must provide the City with a deposit in an amount equal to the replacement cost of the AVI.
- (J) Lease Requirements. The Related AMLI Entities shall include in all leases after the date of this Second Amendment with Retail Businesses in Blocks 2, 4, 20 or 22, an obligation to comply with this Section 2.7.
- (1) The Related AMLI Entities must diligently and in good faith enforce the terms of this Section 2.7.
- (2) If a particular Retail Business violates the terms of this Section 2.7 more than six (6) times in any annual-period, the City shall be entitled to terminate the right of all Retail Employees of that Retail Business to park in the City Hall Parking Garage.
- (K) No obligation to Related AMLI Entities. The Related AMLI Entities have and shall have no obligation to provide Retail Employee parking in the Block 20 parking garage or the Block 22 parking garage.
- 2.8 Other Parking Agreements; District Wide Parking Agreement. This Second Amendment constitutes the Parties' understanding and agreement regarding a common parking plan for the 2nd Street District.
- 2.9 Interruption of Parking Rights. If the City determines that City Hall is at risk for security breaches, then the City may elect to prohibit some or all types of parking from the City Hall Parking Garage. The City must apply this prohibition to all those who qualify for that type of parking so that, for example, the Retail Employees under this Second Amendment are not disadvantaged by comparison with employees of retail businesses outside of the Retail Project who may be entitled to park in the City Hall Parking Garage. The prohibition on access will continue for as long as the City deems prudent. The City agrees to make commercially reasonable efforts to provide alternate public parking and employee parking for Retail Employees with AVIs within the City Hall Parking Garage if providing that parking is economically and operationally feasible; however, because the interruption is due to actual or potential security breaches, the Related AMLI Entities acknowledges the City may have little or no ability to provide alternate parking. In no event will the City ever be required to allocate any parking for City employees for uses contemplated by this Second Amendment nor will the City be deemed to be in violation of this Section 2.9 if it allows its employees of the City Hall Retail Space to continue to park in the City Hall Parking Garage despite prohibiting others, including other Retail Employees, from parking in the City Hall Parking Garage.

* * *

- 2.11 Maintenance. All Parties must maintain their respective parking garages consistent with other parking garages in the area. All Parties acknowledge a parking garage may need to be closed in whole or in part from time to time for routine and emergency maintenance, repairs, and other services to a parking garage. The City agrees to make commercially

reasonable efforts to provide alternate public parking and employee parking for Retail Employees with AVIs within the Retail Project if providing that parking is economically and operationally feasible.

- (A) In no event will the City be required to allocate any parking for City employees for uses contemplated by this Second Amendment.
- (B) Scheduled Closures. The Parties will give each other ten (10) days advanced written notice of closures for scheduled maintenance, repairs or other service. The Parties will use commercially reasonable efforts to avoid scheduling these types of closures during times of the year that are particularly busy for the Retail Project and to limit the extent and duration of scheduled closures.
- (C) Emergency Closures. The Parties will give each other's Authorized Representative (as defined in Section 5.5, below) e-mail or facsimile notice of any emergency maintenance, repairs or other service(s) as soon as reasonably feasible. Because these closures cannot be reasonably anticipated, the Parties will have no obligation to avoid scheduling them during times of the year that are particularly busy for the Retail Project, but will be obligated to minimize, to the extent feasible given the particular situation, the extent and duration of these types of closures.

2.12 Rules and Regulations; Towing. Any Party may impose reasonable rules relating to the operation of the that Party's parking garage, such as speed limits, directional signs and arrows, and fire lanes. Any Party may post signs advising those using the that Party's parking garage that non-complying vehicles may be towed at the owner's cost. Any Party may ticket or tow vehicles that do not comply with those rules and regulations, do not comply with applicable law, or do not comply with posted signs.

ARTICLE 3 ASSIGNMENT

AMLI Downtown is entitled to assign its rights and obligations under the AMLI Retail Parking Agreement and this Second Amendment to any person or entity to which AMLI Downtown assigns its interest in the Block 20 parking garage. AMLI 421 is entitled to assign its rights and obligations under the AMLI Retail Parking Agreement and this Second Amendment to any person or entity to which AMLI 421 assigns its interest in the Block 22 parking garage. AMLI Retail is entitled to assign its rights and obligations under the AMLI Retail Parking Agreement and this Second Amendment to any person or entity to which AMLI Retail assigns its interest in the Blocks 2 and 4 Retail Project. In the event of such assignment by a Related AMLI Entity, the Related AMLI Entity which assigns its rights and obligations under the AMLI Retail Parking Agreement and this Second Amendment will automatically be released from all liability under the AMLI Retail Parking Agreement and this Second Amendment arising from and after the date of such assignment. Such assignments by the Related AMLI Entities may be done at the same time or at different times. The City may assign its rights and obligations under this Second Amendment to anyone to whom it sells or conveys the City Hall Parking Garage. In such event, the City will automatically be released from all liability under this Second Amendment, whether the liability arose before, on, or after the date of that sale or conveyance.

ARTICLE 5
MISCELLANEOUS

- 5.1 Notices. Any notice to be given or to be served in connection with this Agreement must be in writing, and will be deemed delivered and received when actually received or, if earlier, and regardless of when received (a) three (3) days after being deposited in the United States mail, certified mail, properly addressed, with postage prepaid; (b) the number of days specified in the contract with a reputable overnight courier service (e.g., one day if sent "next-day" and two days if sent "two day"), if sent by overnight courier service; or, (c) facsimile (fax) transmission, provided the party to whom the fax is addressed has designated a facsimile number below and the sending party has a fax generated verification of the date and time of transmission and the fax number to which the notice was sent:

CITY OF AUSTIN:

Sue Edwards
Assistant City Manager
City of Austin
P. O. Box 1088
Austin, TX 78767
Phone: 512-974-7820
Facsimile: 512-974-2833

With copies to:
Fred Evins
Redevelopment Project Manager
EGRSO
P. O. Box 1088
Austin, TX 78767
Phone: 512-974-7131
Facsimile: 512-974-7825

Cathie Childs
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, TX 78767
Phone: 512-974-6463
Facsimile: 512-974-2312

THE AMLI RELATED ENTITIES:

Taylor Bowen
AMLI Residential Properties
5057 Keller Springs Road, Suite 250
Addison, Texas 75001
Phone: 972-265-6726

Carrie Holt
AMLI Residential Properties
421 West 3rd Street
Austin, Texas 78701
Phone: 512-476-1225

With copies to:
K. Kent Smith
Jackson Walker, L.L.P.
100 Congress Ave., Suite 1100
Austin, TX 78701
Phone: 512-236-2353
Facsimile: 512-391-2146

Charlotte Sparrow
AMLI Residential Properties
200 W. Monroe St., Suite 2200
Chicago, Illinois 60606
Phone: 312-283-4930 ext.3129743264

- 5.28 NO SECURITY. THE PARTIES ARE NOT OBLIGATED TO PROVIDE SECURITY FOR THEIR RESPECTIVE PARKING GARAGES, MAKE NO REPRESENTATIONS OR WARRANTIES THAT THEY WILL PROVIDE SECURITY IN THEIR RESPECTIVE PARKING GARAGES, AND MAKE NO REPRESENTATION OR WARRANTY THAT IF THEY DO PROVIDE SECURITY, WHAT FORM THE SECURITY WILL TAKE AND WHETHER OR NOT THE SECURITY WILL BE EFFECTIVE. PERSONAL PROPERTY LEFT IN PARKED VEHICLES IS DONE SO AT THE VEHICLE OWNER'S RISK. THIS SECOND AMENDMENT DOES NOT CREATE A BAILMENT AND THE PARTIES ARE NOT, EITHER COLLECTIVELY OR INDIVIDUALLY, A BAILEE.

ALL OTHER TERMS AND CONDITIONS NOT EXPRESSLY REFERENCED IN THIS SECOND AMENDMENT REMAIN IN FULL FORCE AND EFFECT.

Pursuant to Section 5.18 of the AMLI Retail Parking Agreement, this Second Amendment may be executed in any number of counterparts, each of which is an original and all of which constitute one and the same document.

CITY OF AUSTIN

Date: April 1, 2011

By: Sue Edwards
Sue Edwards
Assistant City Manager

APPROVED AS TO FORM AND CONTENT:

By: Cathie Childs
Cathie Childs
Assistant City Attorney

AMLI AUSTIN RETAIL, L.P.,
a Texas limited partnership

By: AMLI Austin Retail GP, LLC,
a Texas limited liability company
its general partner

By: AMLI Development Company, LLC,
a Delaware limited liability company,
its sole member

Date: 4.1.2011

By: [Signature]
Name: TATIANA BOWEN
Title: Executive Vice President

AMLI DOWNTOWN AUSTIN, L.P.,

a Delaware limited partnership

By: AMLI Residential Properties, L.P., a Delaware limited partnership, its General Partner

By: AMLI Residential Partners LLC, its General Partner

Date: 4.1.2011

By: Taylor Bowen
Name: Taylor Bowen
Title: Authorized Person

PPF AMLI 421 WEST 3rd STREET, L.P.,

a Delaware limited partnership.

By: PPF AMLI 421 West 3rd Street GP, LLC, a Delaware limited liability company, its general partner

By: PPF AMLI Devco, LLC, a Delaware limited liability company, its sole member

By: PPF AMLI Co-investment, LLC, d/b/a PPF AMLI Development, LLC, a Delaware limited liability company, its manager

By: AMLI Residential Properties, L.P., a Delaware limited partnership, its manager

By: AMLI Residential Partners LLC, a Delaware limited liability company, its General Partner

Date: 4.1.2011

By: Taylor Bowen
Name: Taylor Bowen
Title: Authorized Person

EXHIBITS:

| | |
|--------------------|--|
| Exhibit “A” | Parking Agreement between the City of Austin and AMLI Austin Retail, L.P. |
| Exhibit “B” | First Amendment to Parking Agreement between the City of Austin and AMLI Austin Retail. L.P. |
| Exhibit “C” | City of Austin Contractor Insurance Requirements. |

EXHIBIT "A"

PARKING AGREEMENT

This Parking Agreement (this "Agreement") is executed by and between the City of Austin, a Texas home rule municipal corporation (the "City"), and AMLI Austin Retail, L.P., a Texas limited partnership ("Developer"). The "Effective Date" of this Agreement is the date this Agreement is fully executed by both Developer and the City.

ARTICLE 1

GENERAL

- 1.1 Background: This Section 1.1 sets forth an explanation of the background to the transaction evidenced by this Agreement, but is not in any way to be deemed binding on the City or Developer. Specifically, but not in limitation, it cannot be deemed to include any representations and warranties by the City or Developer. In 1998, the City and Computer Sciences Corporation, a Nevada corporation ("CSC"), were seeking new locations for their respective headquarters. The City had outgrown its current municipal facilities and CSC desired to consolidate its financial services headquarters. At the same time, the City was seeking to re-vitalize the area now known as the "2nd Street District" with residential development, retail uses (which term includes both shops and restaurants), and other destination uses. The "2nd Street District" is the area located in the City of Austin, Travis County, Texas, and bounded by W. 3rd Street on the north, Colorado Street on the east, W. Cesar Chavez on the south, and San Antonio Street on the west. A drawing showing the 2nd Street District is attached to this Agreement as Exhibit A. There are six city blocks in the 2nd Street District. On the north, from west to east, are Blocks 22, 21, and 20 and on the south, from west to east, are Blocks 2, 3, and 4. As the City and CSC envisioned it, the City would put its new City Hall (the "City Hall") on Block 3 and CSC, as the ground lessee from the City, would put its financial services headquarters buildings on Blocks 2 and 4 (i.e., the blocks on either side of City Hall) and possibly expand into Block 21. An existing historic building (the "Schneider Building") would be left in place on Block 2 and CSC would construct its building around the Schneider Building. To provide more residential development downtown, AMLI Residential Properties, L.P., a Delaware limited partnership ("AMLI"), would, as the managing general partner of the owner of Block 20, cause the owner of Block 20 to construct a multi-story apartment complex with ground floor retail on Block 20, and would, as the ground lessee of Block 22, construct a multi-story apartment complex with ground floor retail on Block 22. Since one of the City's goals in this re-vitalization effort was to have street level retail operations, the City would sublease back from CSC certain ground-floor space on Blocks 2 and 4 and the Schneider Building and would have two retail spaces in City Hall facing onto 2nd Street (the "City Hall Retail Space"). The City would then seek a developer to develop that space for retail uses in Block 2 and 4, a retail developer for the Schneider Building, and a marketing and leasing agent for the City Hall Retail Space. The Schneider Building is being handled separately. The City had initially negotiated with AMLI to be the developer for the retail space in Block 2 and 4 and to be

the managing and leasing agent for the City Hall Retail Space. AMLI proposed that its Affiliate, Developer, be the developer and managing and leasing agent instead and the City agreed to that arrangement in the DDA (as defined in Section 1.2(B) below). "Affiliate" means, as to any entity:

- (A) A corporation, partnership, limited liability company, joint venture, or other entity that owns, directly or indirectly through subsidiaries, more than 50 percent of the outstanding voting interests of that entity,
- (B) A corporation, partnership, limited liability company, joint venture, or other entity more than 50 percent of the outstanding voting interests of which are owned, directly or indirectly through subsidiaries, by that entity, or
- (C) A corporation, partnership, limited liability company, joint venture, or other entity that has the same ultimate parent as that entity.

1.2 Description of the Underlying Agreements and the Disposition and Development Agreement: On February 1, 2000, the City and CSC entered into a Master Agreement which outlined the agreement of the City and CSC concerning the matters described in Section 1.1 above. The Master Agreement has been amended five times. The first four amendments are effective as of February 1, 2000 and entitled, respectively, "First Amendment to Master Agreement," "Second Amendment to Master Agreement," "Third Amendment to Master Agreement," and "Fourth Amendment to Master Agreement." The fifth amendment is effective as of January 31, 2002 and entitled "Fifth Amendment to Master Agreement." At the time the original Master Agreement was executed, the City and CSC executed and deposited into escrow with Heritage Title Company of Austin, Inc. (the "Title Company") the agreements described below. These agreements were held, undated, until certain pre-conditions were met, at which time they were dated and released:

(A) Underlying Agreements:

(1) Transfers from the City to CSC:

- (a) Ground Lease Agreement covering Block 2 dated February 15, 2000 (as amended by the "First Amendment to Ground Lease Agreement" dated January 31, 2002, the "Block 2 Ground Lease").
- (b) Ground Lease Agreement covering Block 4 dated April 10, 2000 (as amended by the "First Amendment to Ground Lease Agreement" dated January 31, 2002, the "Block 4 Ground Lease").

(2) Transfers from CSC back to the City:

- (a) Retail Sublease Agreement for the ground floor retail space on Block 2 effective as of February 15, 2000 (as amended by First Amendment to Retail Sublease Agreement effective as of October

6, 2004, the "Block 2 Retail Sublease"). The subleasehold estate created by the Block 2 Retail Sublease is referred to as the "Block 2 Property."

- (b) Retail Sublease Agreement for the ground floor retail space on Block 4 effected as of April 10, 2000 (as amended by First Amendment to Retail Sublease Agreement effective as of October 6, 2004, the "Block 4 Retail Sublease"). The subleasehold estate created by the Block 4 Retail Sublease is referred to as the "Block 4 Property."
 - (B) The Disposition and Development Agreement. The City has assigned the Block 2 Property and the Block 4 Property (collectively, the "Property") to Developer, subject to the terms and conditions of the Disposition and Development Agreement effective as of October 12, 2004 (the "DDA"). The Property is currently empty shell space.
 - (C) The Retail Project. Developer intends to develop the Property for retail use (which term includes restaurant use) as part of the development of the 2nd Street District for uses including retail, multi-family, and civic uses. Entities related to Developer will develop the multifamily and mixed-use projects on Block 22 and Block 20. AMLI has executed a ground lease with the City for Block 22, the development of which will include retail use. AMLI is also the managing general partner of the limited partnership that owns Block 20, but an outside investor is a partner in the entity that owns Block 20. The City intends that the City Hall Retail Space be included in the 2nd Street District, although the ownership of the City Hall Space will remain with the City. The development of the Property, the retail space on Blocks 20 and 22, and the City Hall Retail Space are referred to collectively as the "Retail Project." The portion of the Retail Project that relates solely to the Property is referred to as the "Block 2 and 4 Retail Project." Retail and restaurant businesses located in the Block 2 and 4 Retail Project are collectively referred to in this Agreement as "Retail Businesses" and individually, as a "Retail Business." An employee of a Retail Business is referred to as a "Retail Employee."
 - (D) The Parking Agreement. Under the terms of the DDA, the City and Developer were to enter into negotiations for an agreement that would grant Developer rights to use the parking garage under City Hall. This Agreement is the result of those negotiations and fulfills all requirements in the DDA concerning parking in the parking garage under City Hall.
- 1.3 Defined Terms. A list of defined terms and the section in which they are defined is attached to this Agreement as Exhibit C (i.e., the last Exhibit to this Agreement).

ARTICLE 2

AGREEMENT CONCERNING THE PARKING GARAGE

- 2.1 Term of this Agreement. This Agreement is effective on the Effective Date. Certain obligations under this Agreement do not begin on the Effective Date, but rather begin on the Commencement Date. The "Commencement Date" is determined as follows. No earlier than 30 days before the first Retail Tenant opens for business in the Block 2 and 4 Retail Project, Developer must deliver written notice to the City stating that the first Retail Tenant will open for business by no later than a particular date, which cannot be more than 30 days after the date of Developer's notice. The City must select a date from the 30-day period after the date of Developer's notice as the Commencement Date and must notify Developer in writing of the Commencement Date that the City has selected. If the Commencement Date is the first day of a calendar month, then this Agreement expires on the 12th anniversary of the day before the Commencement Date. If the Commencement Date is not the first day of a calendar month, then this Agreement expires on the last day of the calendar month in which the 12th anniversary of the Commencement Date occurs. The date upon which this Agreement expires in accordance with the terms of the preceding two sentences is referred to in this Agreement as the "Expiration Date." At any time during the 120-day period that begins on the 11th anniversary of the Commencement Date, Developer may request that the City enter into good faith negotiations to renew the term of this Agreement. This request must be in writing and delivered in accordance with the terms of this Agreement. The City and Developer must negotiate in good faith to renew the term of this Agreement for 180 days after the date of the request from Developer to the City. If at the end of that 180 day period, the City and Developer have not reached agreement, then neither of them will be required to negotiate in good faith after the end of that 180-day period, although nothing prevents them from doing so if they wish. However, unless and until the City and Developer enter into a written agreement extending the term of this Agreement beyond the Expiration Date, then the term of this Agreement will expire on the Expiration Date. This automatic expiration occurs even if the City and Developer are in negotiations to extend the term of this Agreement when the Expiration Date occurs.
- 2.2 Description of the Parking Garage: The parking garage under City Hall is referred to in this Agreement as the "Parking Garage." A drawing of the Parking Garage, showing the levels of parking ("Level B", "Level P1", "Level P2", and "Level P3") and associated ramps, entrance and exit, and the location of the parking garage booth, is attached to this Agreement as Exhibit B. Exhibit B shows the approximate layout of the Parking Garage at this time, but may contain inaccuracies, so that the City makes no representation or warranty concerning Exhibit B. Further, the Parking Garage (including ramps, entrances, exits, and the location of the parking booth) is subject to physical modification by the City if the City believes, in the exercise of its sole and absolute discretion, that those modifications are in the City's best interests.
- 2.3 Access to and from the Parking Garage:
- (A) Location of Entrance and Exit: Currently, the only entrance to the Parking Garage is from Lavaca and the only exit from the Parking Garage is to Guadalupe. However, the City may change the location of entrances and exits if the City believes, in the exercise of its sole and absolute discretion, that those modifications are in the City's best interests.

- (B) Mechanical Devices: The City will purchase and install (or will cause to be installed, at no expense to Developer) all equipment for the operation of the parking garage, including, without limitation, a parking booth at the location shown for the booth on Exhibit B. However, the City is not responsible for any cost or expenses for equipment related to valet parking in the Parking Garage. The City may change the location of the parking booth if the City believes, in the exercise of its sole and absolute discretion, that that change is in the City's best interests.

2.4 Days and Hours of Operation: Beginning on the Commencement Date, the City will cause the Parking Garage to be open every day during certain hours. At this time, the City anticipates that the Parking Garage will open between 8 or 9 a.m. and will close between midnight or 2 a.m. The City, acting through its Building Services Operator, may alter the days and times set forth in the preceding sentence if the City decides to do so, in the exercise of its sole and absolute discretion. However, the City acknowledges and agrees that to the extent economically and operationally feasible, it will take into account the needs of the Block 2 and 4 Retail Project in setting those hours.

2.5 Public Parking; Validation: Public parking is parking that is available to anyone at any time, as long as they pay the established fee for public parking in the Parking Garage and spaces are available.

- (A) Beginning on the Commencement Date, the City must use reasonable good faith efforts to provide the number of spaces for the different types of parking during the time periods set forth below. There are six separate days and times that are described below (each of which is sometimes referred to as a "Parking Increment"): Council Meeting Days; Council Meeting Evenings; Standard Days; Standard Evenings, Weekend Days, and Weekend Evenings. The City may alter the days and times set forth below if the City decides to do so, in the exercise of its sole and absolute discretion. However, the City acknowledges and agrees that to the extent economically and operationally feasible, it will take into account the needs of the Block 2 and 4 Retail Project in setting the days and times for parking. The number of parking spaces specified below for each Parking Increment is the City's best estimate of the number that will be available for public parking during that Parking Increment. Developer acknowledges that the City may be unable to make the specified number of parking spaces available for public parking due to a number of factors, including the number of City employees working late on week days or working on weekends and the number of City staff, officials, and citizens attending meetings—not just City Council meetings—held at City Hall. Nothing in this Agreement limits access to or use of the Parking Garage by City employees working at City Hall or impairs the City's right to schedule meetings or functions at City Hall.

- (1) "Council Meeting Days" are from 8 a.m. until 5 p.m. on those days during which the City Council of the City of Austin is scheduled to meet. Currently, Council Meeting Days are Thursdays, but those days are subject to change and expansion to more than one day at any time. During

each Council Meeting Day, there will be 245 parking spaces in the Parking Garage that are available for public parking. These parking spaces will be after the parking booth, at a location the City designates.

- (2) "Council Meeting Evenings" are from 5 p.m. until the closing time set by the City on those evenings during which the Council Meeting of the City is scheduled to meet. During each Council Meeting Evening, there will be at least 245 parking spaces in the Parking Garage that are available for public parking. These spaces will be after the parking booth, at a location the City designates.
 - (3) "Standard Days" are from 8 a.m. until 5 p.m., Monday through Friday, excluding Council Meeting Days. During Standard Days, there will be at least 245 parking spaces in the Parking Garage that are available for public parking. These spaces will be after the parking booth, at a location the City designates.
 - (4) "Standard Evenings" are from 5 p.m. until the closing time set by the City, Monday through Thursday Evenings, *excluding* Council Meeting Days. During Standard Evenings, there will be at least 350 parking spaces in the Parking Garage that are available for public parking. These spaces will be after the parking booth, at a location the City designates.
 - (5) "Weekend Days" are from 9 a.m. until 5 p.m. on Saturdays and Sundays. During Weekend Days, there will be at least 350 parking spaces in the Parking Garage that are available for public parking. These spaces will be after the parking booth, at a location the City designates.
 - (6) "Weekend Evenings" are Friday, Saturday, and Sunday Nights from 5 p.m. until the closing times set by the City (which may vary depending on the night). During Weekend Evenings, there will be at least 350 parking spaces in the Parking Garage that are available for public parking. These spaces will be after the parking booth, at a location the City designates.
- (B) The City will set the rates for all parking. The City makes no representation or warranty concerning the rates or the frequency with which they may be changed.
 - (C) The City has agreed to provide two hours of Validation for patrons of the Block 2 and 4 Retail Project during Standard Days and Council Meeting Days. If and only if, the City charges its standard parking rates on Weekend Days, then the City will provide two hours of Validation for patrons of the Block 2 and 4 Retail Project during Weekend Days. If the City institutes a different parking rate for Weekend Days (for example, if the City institutes a flat rate), then the City will not honor any Validations on Weekend Days. The City's agreement to engage in a validation program only lasts through the day before the fifth anniversary of the Commencement Date. Beginning on the fifth anniversary of the Commencement

Date, the City may elect to discontinue the validation arrangement or may require a different validation arrangement.

- (1) Validation Devices: The Developer must cause all Retail Businesses to purchase validation devices specified by the City. These validation devices are currently in the shape of a clamshell and so will be referred to as a "Clamshell." A Clamshell electronically encrypts the amount of free parking to which the person receiving the validation is entitled onto the parking ticket. When the parking ticket is presented at the exit from the Parking Garage, the reading device in the Parking Garage automatically gives the customer the amount of free parking encrypted onto the ticket. The amount of free parking that may be encrypted onto any parking ticket is limited by the terms of Section 2.5(C)(2) below.
- (2) Persons to Whom Developer may Grant Validation Rights and Validation Periods. The only persons to whom Retail Businesses may give Validations are customers of Retail Businesses who enter the Parking Garage before 5:00 p.m. on any Standard Weekday or Council Meeting Day or, if applicable, any Weekend Day. The maximum amount of time that can be validated is two hours. This period of time is referred to as the "Validation Period". A customer is limited to a single validation for any one parking ticket, regardless of the number of Retail Businesses in the Block 2 and 4 Project the customer patronizes. If the customer parks in the Parking Garage for longer than the Validation Period, the customer will be required to pay as if the customer entered the Parking Garage immediately after the end of the Validation Period.
- (3) Fees for Validation: During the first five years after the Commencement Date, the City will not charge Developer a fee for validations. If the City agrees to consider a validation program after the fifth anniversary of the Commencement Date, the City intends to charge a fee determined by the City. If Developer does not wish to be part of the validation program at any time after the end of the fifth year after the Commencement Date, Developer must notify the City of that fact in writing. If Developer so notifies the City of its decision to opt out of the validation program, Developer will not be obligated to pay any fees for Validation and the City will not be obligated to recognize any Validations for the period beginning on the first day of the next month after the month in which Developer delivers that notice to the City and continuing through the remainder of the term of this Agreement. If Developer elects to opt out of the validation program, the City will continue to be free to offer Validations to other persons or entities and Developer will not be able to become part of the validation program again without the City's consent, which consent the City may grant or withhold in its sole discretion.
- (4) Developer must cause Retailers to Limit Validations to Customers for the Time they are Customers: Developer must include in all leases with Retail

Businesses in the Block 2 and 4 Retail Project specific prohibitions against giving Validations to anyone who is not patronizing a Retail Business at the time it gives the Validation and against giving multiple validations. Developer must diligently and in good faith enforce these prohibitions. Any violation of this Section 2.5 by a Retail Business constitutes a breach of this Agreement.

- (5) "Validation," as used in this Agreement, means any method that allows a customer of a Retail Business to parking in the public park area of the Parking Garage.

2.6 Valet Parking: In addition to the public parking, the City will permit valet parking in the Parking Garage subject to the following terms and conditions:

- (A) Valet Parking Operator: Developer, but not any individual Retail Tenant or group of Retail Tenants, may contract with a valet parking operator to use the Parking Garage for storage of valet-parked vehicles. Any contract, even a contract with the City's Parking Garage operator, must be on the terms and provisions concerning valet parking set forth in this Section 2.6. The City must approve of the valet parking operator and contract before the valet parking operator may use the Parking Garage. The 30-day period after Developer delivers a proposed valet parking contract to the City for its review is referred to in this Agreement as the "Valet Contract Review Period." During the Valet Contract Review Period, the City may approve or disapprove of the valet contract or extend the Valet Contract Review Period by 15 days. If the City does not respond at all by the end of the applicable Valet Contract Review Period (i.e., 30 or 45 days), then the City will be deemed to have approved of the proposed valet contract and Developer may enter into the proposed valet contract with the proposed valet parking operator, upon the same terms and conditions as the proposed contract that Developer submitted to the City. If there are any changes to that contract (including any changes in the valet parking operator), then Developer must again submit the contract to the City for the City's review.
- (B) Number of Parking Spaces for Valet Parking: The City and Developer agree that because the Block 2 and 4 Retail Project is not open and operating, it is very difficult to anticipate exactly how many parking spaces a valet parking operator would need to use. Therefore, they have agreed to establish certain minimum and maximum valet parking areas and establish a procedure for increasing or decreasing the amount of valet parking at any time during the term of this Agreement.
- (1) Initial and Maximum Number of Valet Spaces: The City will initially provide the following number of valet parking spaces during the following Parking Increments. Notwithstanding the procedure for increasing the number of valet parking spaces set forth in Section 2.6(B)(2) below, the City will not be obligated to provide more than the maximum number of valet parking spaces identified during the following Parking Increments:

- (a) Council Meeting Days: Initially, the City will provide 20 valet parking spaces. In no event will the City provide more than 50 valet parking spaces.
 - (b) Council Meeting Evenings: Initially, the City will provide 30 valet parking spaces. In no event will the City provide more than 110 valet parking spaces.
 - (c) Standard Days: Initially, the City will provide 20 valet parking spaces. In no event will the City provide more than 50 valet parking spaces.
 - (d) Standard Evenings: Initially, the City will provide 30 valet parking spaces. In no event will the City provide more than 135 valet parking spaces.
 - (e) Weekend Days: Initially, the City will provide 30 valet parking spaces. In no event will the City provide more than 135 valet parking spaces.
 - (f) Weekend Evenings: Initially, the City will provide 30 valet parking spaces. In no event will the City provide more than 135 valet parking spaces.
- (2) Procedure for Increasing the Number of Valet Spaces: If Developer concludes that it requires more valet parking spaces than those allocated at a particular time, then Developer may notify the City of that fact in writing, specifying the total number of valet parking spaces that Developer believes are necessary for each Parking Increment for which Developer is requesting a change. This number can vary by Parking Increment as long as the exact proposal for each day and time is clear.
- (a) If the request is for more than the maximum number of valet parking spaces in any Parking Increment, then the City will not be obligated to consider the request. The City and Developer both acknowledge that the maximum number of valet parking spaces for Council Meeting Days and Standard Days is significantly lower than the maximum number of valet parking spaces for the other Parking Increments. If Developer's request is to increase the maximum for those two Parking Increments, then the City agrees to consider the request, but Developer acknowledges that because of the layout and operational issues, it may be difficult for the City to accommodate that request and any accommodation might include expenses that the City would expect Developer to bear. Even under those circumstances, the City may grant or withhold its approval of the request in its sole and absolute discretion.

- (b) If the request is for less than or equal to the maximum number of valet parking spaces for each particular Parking Increment, the City will review the request and the layout of the parking garage and, within 30 days after the request from Developer, propose an increase in the number of valet parking spaces for each applicable Parking Increment that accommodates Developer's request, if possible, but takes into account how the Parking Garage functions. Developer acknowledges that because of the layout of the parking garage, the number of parking spaces that the City proposes may be less or more than the number that Developer has specified. The City's proposal must also include the fee for the increased spaces if the City is permitted to charge a fee under the terms of Section 2.6(E) below. If Section 2.6(E) specifies the amount of the fee, then the City may only include a fee in the amount so specified. Developer may elect not to increase the number of parking spaces based upon the City's proposal, but Developer must make that election within 10 days after the date of the City's proposal. If Developer does not make that election within that 10-day period, then Developer will be deemed to have accepted the City's proposal. Developer may not make more than one proposal for increase in any 60-day period.
- (3) Procedure for Decreasing the Number of Spaces: If either the City or Developer (the "Initiating Party") believes that Developer does not need all of the valet parking spaces allocated to it during any or all of the Parking Increments, then the Initiating Party may deliver written notice to the other party of that fact, specifying how many valet parking spaces should be provided during each of the Parking Increments for which the Initiating Party believes a change is appropriate. In that notice, the Initiating Party must set a day and time for a meeting concerning this matter, which meeting cannot be set for less than 10 days after the date of the Initiating Party's notice. The City and Developer agree to work diligently and in good faith at that meeting to determine the number of valet parking spaces that are necessary for each Parking Increment for which the Initiating Party believes a change is appropriate.
- (C) Location of Valet Parking Spaces: The City will designate the area of the Parking Garage that the valet parking operator may use to store valet-parked vehicles. It is possible that this area will not be exclusively used for storage of valet-parked vehicles. The valet parking operator may stack cars in areas that are designated as being for the exclusive use of the valet parking operator, but may not do so in any other areas of the Parking Garage.
- (D) Valet Parking Times: The valet parking operator cannot leave vehicles in the City Hall after the end of the last Parking Increment in which it is entitled to store valet-parked vehicles in the Parking Garage, which will probably be the evening Parking Increment for that day. The evening Parking Increment may extend into

the early morning of the next day, but is still the evening Parking Increment for the day in which it begins. By no later than the end of each last Parking Increment for each day, the valet parking operator must move the vehicle to another location and provide the City with the contact information for obtaining return of the vehicle. The City does not assume any responsibility for helping customers obtain vehicles moved to another location.

- (E) Cost of Valet Storage: The City has agreed to fix the valet storage fees for the first five years of this Agreement, but has not agreed to do so thereafter.

- (1) Fixed Fees During the First Two Years. During the first two years after the Commencement Date, the City will not charge a garage storage fee during Council Meeting Days, Standard Days, and Weekend Days. During that two-year period, the City may charge a monthly garage storage fee during Council Meeting Evenings, Standard Evenings, and Weekend Nights determined by multiplying the number of parking spaces allocated for valet parking during each of those three Parking Increments by the applicable amount set forth below. The City will not charge the fixed fees until Developer has made a written request to the City to begin using the Parking Garage for valet parking.

| Council Meeting Evenings | Standard Evenings | Weekend Evenings |
|--------------------------|-------------------|------------------|
| \$10.00/month | \$25.00/month | \$25.00/month |

- (2) Fixed Fees During Years Three through Five. Beginning on the second anniversary of the Commencement Date and continuing through the day before the fifth anniversary of the Commencement Date, the City will charge a monthly fee for valet storage during each Parking Increment determined by multiplying the number of parking spaces allocated for valet parking during each Parking Increment by the applicable amount set forth below:

| Council Meeting Days | Standard Days | Weekend Days |
|----------------------|---------------|---------------|
| \$10.00/month | \$25.00/month | \$25.00/month |

| Council Meeting Evenings | Standard Evenings | Weekend Evenings |
|--------------------------|-------------------|------------------|
| \$10.00/month | \$25.00/month | \$25.00/month |

- (3) City to Set Fees after the end of the Fifth Year. Beginning on the fifth anniversary of the Commencement Date, the City will set the fee for the valet storage at whatever fee the City believes is appropriate.
- (4) Explanation of How Fees are Calculated; Examples. The number of parking spaces allocated during any Parking Increment is the greatest number allocated to that Parking Increment on any day or evening during

that calendar month. Neither the number of spaces nor the monthly amount for those spaces set forth above is pro-rated.

- (a) Example during the First Two Years: If the number of parking spaces allocated to each Parking Increment at any time during any calendar month during the first two years is the initial amount specified in Section 2.6(B)(1) above, then the monthly amount due for that calendar month would be \$1,800, determined as set forth below. If, in this example, the number of spaces for Council Meeting Evenings were 20 for part of the month and 50 for another part of the month, the amount for Council Meeting Evenings would be 50 spaces x \$10 each or \$500.00 and the total amount would increase to \$2,000.

| | | |
|--------------------------|-------------------------|---------------------|
| Council Meeting Days | 20 spaces x \$0.00 each | = \$ 0.00 |
| Council Meeting Evenings | 30 spaces x \$10 each | = \$ 300.00 |
| Standard Days | 20 spaces x \$0.00 each | = \$ 0.00 |
| Standard Evenings | 30 spaces x \$25 each | = \$ 750.00 |
| Weekend Days | 30 spaces x \$0.00 each | = \$ 0.00 |
| Weekend Evenings | 30 spaces x \$25 each | = \$ 750.00 |
| TOTAL | | = \$1,800.00 |

- (b) Example During Years Three through Five. If the same number of parking spaces were allocated to each Parking Increment at any time during any calendar month during years three through five, then the monthly amount due for that calendar month would be \$3,250.00, determined as set forth below. If, in this example, the Developer had used 50 spaces during Standard Days, but reduced them to 20 spaces at some point during the month, the number of spaces for that month would nevertheless remain at 50, the total amount due for Standard Days would be \$1,250, and the total amount due for that month would be \$4,000.

| | | |
|--------------------------|-----------------------|---------------------|
| Council Meeting Days | 20 spaces x \$10 each | = \$ 200.00 |
| Council Meeting Evenings | 30 spaces x \$10 each | = \$ 300.00 |
| Standard Days | 20 spaces x \$25 each | = \$ 500.00 |
| Standard Evenings | 30 spaces x \$25 each | = \$ 750.00 |
| Weekend Days | 30 spaces x \$25 each | = \$ 750.00 |
| Weekend Evenings | 30 spaces x \$25 each | = \$ 750.00 |
| TOTAL | | = \$3,250.00 |

- (F) Use Limited to Patrons of the Block 2 and 4 Retail District and the City Hall Retail Space: Unless and until district-wide parking is implemented, the parking operator may not provide valet parking in the Parking Garage for any patron of any portion of the 2nd Street District other than the Block 2 and 4 Retail Project and the City Hall Retail Space. If district-wide parking is ever implemented, then the valet parking operator may also provide valet parking service for patrons of the remainder of the restaurants and retail stores in the 2nd Street District. In no

event may the valet parking operator provide valet service to any office workers or any other person who does not meet the requirements of this Section 2.6(F).

- (G) Issues Specific to Valet Service: Although all persons using the Parking Garage are required to comply with the rules and regulations of the Parking Garage, it is important that the valet parking attendants understand that this requirement applies to them as well, so that they must comply with the rules and regulations of the Parking Garage, including those concerning stacking, speed, direction of traffic, and right of way. If any portion of the Parking Garage is at any time identified as being for the exclusive use of the valet parking operator, then the valet parking operator must ensure that at the end of the time of exclusive use, that area of the parking garage is neat and clean, with all litter, trash, and garbage removed. If the valet parking operator parks in an area that is not exclusive, then the valet parking operator must ensure that its parking attendants do not leave litter, trash, or garbage within that parking area, but is not otherwise responsible for keeping the shared area neat and clean. The City may require that a valet parking operator cease using a particular attendant within the Parking Garage, without being obligated to give a reason for that requirement.

- (H) Insurance and Indemnity. In order to be entitled to use the Parking Garage for valet storage, the valet parking operator must provide indemnities for the benefit of the City that are acceptable to the City in its sole and absolute discretion and the insurance described below that meets the standard described below.

(1) Required Coverages:

- (a) Workers' Compensation and Employer's Liability Insurance: Worker's compensation insurance with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code Title 5) and Employer's Liability Insurance with limits of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements must be added to both types of policies:

- (i) A Waiver of Subrogation in favor of the City, form WC 420304
- (ii) A 30-day Notice of Cancellation/material change in favor of the City, form WC 420601

- (b) Either a combination of Commercial General Liability Insurance and Business Automobile Liability Insurance or Garage Liability Insurance:

- (i) Combination of Two Types of Insurance:

- (A) Commercial General Liability Insurance: Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverage A (Bodily Injury and Property Damage) and coverage B (Personal and Advertising Injury); and \$1,000,000 product/completed operations limit of liability. The policy must contain the following provisions:
- (1) Blanket contractual liability coverage for liability assumed under this Agreement;
 - (2) Coverage of independent contractors;
 - (3) Fire Legal Liability with a minimum limit of \$50,000;
 - (4) Medical expense coverage with a minimum limit of \$5,000 any one person;
 - (5) The City named as additional insured;
 - (6) 30-day notice of cancellation/material change in favor of the City, form WC 420601;
 - (7) Waiver of subrogation in favor of the City, form 420304.
- (B) Business Automobile Liability Insurance: Business automobile liability insurance covering all owned, non-owned and hired vehicles, with a minimum combined single limit of \$1,000,000. The policy must contain the following provisions:
- (1) The City named as additional insured;
 - (2) 30-day notice of cancellation/material change in favor of the City, form WC 420601;
 - (3) Waiver of subrogation in favor of the City, form 420304.
- (ii) Garage Liability Coverage: Garage Liability policy must have a minimum limit of liability of \$1,000,000 Auto Only/\$1,000,000 Aggregate other than Auto. Coverage must be provided for all owned, hired and non-owned vehicles. The policy must contain the following endorsements in favor of the City of Austin:
- (A) The City named as additional insured;
 - (B) 30-day notice of cancellation/material change in favor of the City, form WC 420601;
 - (C) Waiver of subrogation in favor of the City, form 420304.

- (c) Property Insurance: Property insurance must be provided covering the vehicles and equipment in the care, custody, and control of the valet parking operator. This coverage may be provided in one of the following two ways and must include an endorsement naming the City as a loss payee as its interests in claims asserted may appear.
 - (i) Property Coverage: All risk property insurance with a limit of coverage of \$1,000,000 for vehicles and equipment in the valet parking operator's care, custody and control at any given time.
 - (ii) Garage Keepers Liability Coverage. Garage Keepers liability insurance for vehicles and equipment in the valet parking operator's care, custody, and control on a Direct Primary basis with a minimum limit of coverage of \$1,000,000.
- (2) City's Ability to Modify Requirements. The City reserves the right to review the insurance requirements set forth during the term of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, and the claims history of their industry or the financial condition of the insurance underwriter as well as the valet parking provider.
- (3) Other Requirements.
 - (a) Umbrella Coverage: If the valet parking operator's insurance policies are not written for amounts specified above, the valet parking operator must carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.
 - (b) "Other Insurance" The "other" insurance clause may not apply to the City where the City is shown as an additional insured on any policy. It is intended that policies required in this Agreement, covering the City and the valet parking operator, will be considered primary coverage as applicable.
 - (c) Documentation. All endorsements, waivers, and notices of cancellation endorsements must indicate the following , although the City may change this information by written notice to Developer:

City of Austin/Building Services
Attn: Contract Manager
P. O. Box 1088
Austin, Texas 78767-1088

- (d) Payment Obligations. The valet parking operator is responsible for premiums, deductibles, or self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance provided by the valet parking operator.
- (e) Insurance Ratings: The insurance coverage for the valet parking operator and all subcontractors must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- (f) Certificates of Insurance: On or before the Effective Date and at least 30 days prior to the expiration of each insurance policy, the valet parking operator must deliver to the City, for itself and its subcontractors, original certificates of insurance as evidence that all coverage required under this Agreement is in effect as well as copies of all required endorsements and other evidence of the coverage set forth in the certificate of insurance as the City may reasonably request. In addition, the City is entitled, upon written request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties to this Agreement or the underwriter on any such policies.
- (I) The City's Right to Terminate a Valet Operator's Use of the Parking Garage. If the valet parking operator is not the City's Parking Garage operator, then Developer is responsible for ensuring that the valet parking operator complies with the terms and requirements of this Section 2.6. Any violation of this Section 2.6 constitutes a breach of this Agreement. In addition, if the City believes that a term or provision has not been met, the City will be entitled to send notice to Developer identifying the provision that has not been met and requiring Developer to cause the valet parking operator to meet the requirement. If the City sends six or more notices of non-compliance within any twelve-month period, the City will be entitled to refuse to allow that valet parking operator to use the Parking Garage and may enforce this refusal to allow access as soon as the sixth violation of a requirement occurs (i.e., without any additional notice and

opportunity to cure to Developer, although the City agrees to send Developer notice of the occurrence of the termination within 10 days after the termination occurs). If the City terminates the right of Developer's valet parking operator to use the Parking Garage, then Developer will be permitted to propose a new valet parking operator in accordance with the terms of Section 2.6(A) above.

2.7 **Retail Employee Parking:** Certain Retail Employees will be entitled to park in the area of the Parking Garage that is only accessed by automatic vehicle identification devices ("AVIs," which are initially expected to be radio frequency transponders) and is designated as being, in whole or in part, for Retail Employees. The City's issuance of an AVI to a Retail Employee does not terminate Developer's obligations in connection with the applicable Retail Employee and the AVI issued to that Retail Employee. Rather, the City will be entitled to enforce its rights under this Agreement against Developer, the Retail Employee, and even, under certain circumstances, the Retail Business that employs the Retail Employee.

(A) **Limitation on Number of AVIs:** The City hereby agrees to issue 90 AVIs to Retail Employees that Developer designates and who otherwise meet the requirements of this Section 2.7. If by the 20th day of any calendar month, fewer than 90 AVIs have been issued or requested for Retail Employees, then the City may allocate the unused AVIs to others wishing to park in the Parking Garage as long as the City is able to provide AVIs in accordance with the terms of this Section 2.7 when Developer requests the City to do so.

(B) **Request for AVIs:** Developer must submit to the City an AVI request form for each AVI. With this AVI request form, Developer must provide all of the information described below. The City reserves the right to refuse to issue an AVI to any person without being required to provide the reasons for its refusal to Developer or that person, but the City will provide written notice to Developer that the City has refused to issue the AVI. Developer may only submit AVI request forms on the 20th day of each calendar month (if the 20th is not a Business Day, then the deadline will be extended to the next Business Day). If the City approves an AVI request form, the City will issue the AVI to Developer by the end of that month.

(1) **General Information:** Developer must provide the City with the name of the Retail Employee who will be using the AVI, the Retail Employee's workplace (which must be within the Block 2 and 4 Retail Project), and the make, model, type, and license plate of the vehicle (or vehicles) that the proposed Retail Employee will or may use with the AVI. If a Retail Employee is temporarily driving a vehicle that has not been described in the information provided to the City, then that Retail Employee must follow the rules and regulations established by the City for that situation and, until the rules and regulations are established, must check in with the parking office and notify the City of this temporary change. If any of the other information about a Retail Employee changes after it is provided to the City, then Developer must deliver the new information to the City

within 10 days after the change. If a Retail Employee does not comply with the rules and regulations for temporary changes in the vehicle that Retail Employee Uses or if Developer does not comply with the requirements concerning other changes, the City may refuse to recognize the AVI and may demand that Developer either return the AVI or provide the City with the new information (including the information concerning a Retail Employee's temporary use of a different vehicle) within 10 days. If Developer does not comply with that demand within that 10 day period, Developer will forfeit the AVI Deposit for that particular AVI.

- (2) Background Checks: Developer must include with the AVI request a certified statement that Developer has conducted a 10-year criminal history check in Texas for that Retail Employee and, if the Retail Employee has lived anywhere other than Texas during that 10-year period, a 10-year criminal history check for each jurisdiction in which the Retail Employee has lived (or a statement that Developer has been unable to obtain a 10-year criminal history check in one or more of those other jurisdictions despite Developer's good faith effort to do so). This certification must also include a statement that Developer's criminal history checks do not show that the applicable Retail Employee has been convicted of a felony of violence. Developer must retain the results of the criminal history checks in its files during the term of this Agreement. Developer must deliver to the City a copy of all background checks and efforts to attempt missing background checks within 10 days after the City delivers written request for that information to Developer.
- (C) Obligation to Use AVIs only while Working; Prohibition Against Sharing. Those Retail Employees who receive AVIs may only use them while they are working at the Block 2 and 4 Retail Project. Retail Employees who are coming to work may not park in the area of the Parking Garage that is designated for public parking, unless expressly directed to do so by the staff of the Parking Garage (including the staff of any Parking Garage operator). Retail Employees are prohibited from sharing AVIs.
- (D) Right to Use AVI Terminates upon Termination of Status as a Retail Employee. If any Retail Employee ceases to be an employee of a Retail Business in the Block 2 and 4 Retail Project, then an "AVI Termination Event" will be deemed to have occurred and all rights and privileges of the former Retail Employee to use the AVI or park in areas of the Parking Garage designated for Retail Employees will automatically terminate. Developer must notify the City of the occurrence of each AVI Termination Event within seven days after the AVI Termination Event occurs and must return the applicable AVI to the City within ten days after the AVI Termination Event occurs. If Developer does not comply with these requirements, then Developer will forfeit the AVI Deposit for that particular AVI although the number of AVIs to which Developer is entitled will not be reduced as a result of that forfeiture of the AVI Deposit. Rather, Developer will be

required to go through the application process and put up a new AVI Deposit for any replacement AVI.

- (E) Deposits. For each AVI issued under this Section 2.7, Developer must provide the City with a deposit in an amount equal to the replacement cost of the AVI (the "AVI Deposit"). If an AVI is lost, then the AVI Deposit is forfeited and Developer must provide a new AVI Deposit before the City will issue a new or replacement AVI. There is no other charge to the Developer for the right to obtain AVIs for Retail Employees under the terms of this Section 2.7 and Retail Employees are not charged any separate fee for issuance of an AVI.
- (F) Lease Requirements: Developer must include in all leases with Retail Businesses in the Block 2 and 4 Retail Development an obligation to comply with the terms of this Section 2.7. Developer must diligently and in good faith enforce this compliance. Failure of any Retail Employee to comply with these requirements will entitle the City to terminate that Retail Employee's AVI. If a particular Retail Business' employees violate this Section 2.7 more than six times in any twelve-month period, the City will be entitled to terminate the right of all Retail Employees of that Retail Business to have AVIs, may refuse to recognize any AVIs that have been issued to the employees of that Retail Business, and demand that Developer return those AVIs, and may enforce this refusal to recognize existing AVIs and issue new AVIs as soon as the sixth violation of a requirement occurs (i.e., without any additional notice to Developer). Any violation of this Section 2.7 constitutes a breach of this Agreement.

2.8 Other Parking Agreements; District-Wide Parking Agreement. The City wishes to maximize use of and income from the Parking Garage while honoring the terms of this Agreement. If the City believes it can prudently do so while honoring the terms of this Agreement, the City may enter into agreements concerning use of the Parking Garage with persons or entities that do not have any connection to the Block 2 and 4 Retail Project or even the 2nd Street District. Such agreements can include granting AVIs, permitting valet parking, or granting Validation rights to such persons or entities and their designees. Finally, the City is free to grant any type of parking rights in the Parking Garage it wishes to anyone working at or having business or interest in visiting the City Hall. The City and Developer acknowledge that they would both like to work toward a common parking arrangement for all Retail Businesses and parking facilities within the 2nd District, but that no such system is currently in place. Developer acknowledges the benefit of a parking plan for the entire 2nd Street District and agrees to work with the City toward that end. If the City and Developer, working with the other owners in the 2nd Street District, agree to a common plan that requires changes to this Agreement, then both parties agree to amend this Agreement within 30 days after the City, Developer, and other owners in the 2nd Street District have agreed upon a new, common parking plan.

2.9 Interruption of Parking Rights. If the City determines that the City Hall is at risk for security breaches, then the City may elect to prohibit some or all of types of parking from the Parking Garage. The City must apply this prohibition to all those who qualify for that type of parking, so that, for example, the Retail Employees under this Agreement are not

disadvantaged by comparison with employees of retail businesses outside of the Block 2 and 4 Retail Project who may be entitled to park in the Parking Garage. This prohibition on access will continue for as long as the City deems prudent. The City agrees to make commercially reasonable efforts to provide alternate public parking and employee parking for Retail Employees with AVIs within the Parking Garage if providing that parking is economically and operationally feasible; however, because the interruption is due to actual or potential security breaches, Developer acknowledges that the City may have little or no ability to provide alternate parking. In no event will the City ever be required to allocate any parking for City employees for uses contemplated by this Agreement nor will the City be deemed to be in violation of this Section 2.9 if it allows its employees and the employees of the City Hall Retail Space to continue to park in the Parking Garage despite prohibiting others, including other Retail Employees, from parking in the Parking Garage.

- 2.10 Reports: The City will provide to Developer monthly reports relating to the use of the Parking Garage by Retail Employees. The City will also provide monthly reports setting forth the number of hours of Retail Business Validations the City granted during the immediately-preceding month.
- 2.11 Maintenance. The City must maintain the Parking Garage consistent with other parking garages in the area and with the needs of a garage that provides parking for municipal services. It may be necessary for the Parking Garage to be closed in whole or in part from time to time to perform routine and emergency maintenance, repairs, and other service to the Parking Garage. In that case, the City agrees to make commercially reasonable efforts to provide alternate public parking and employee parking for Retail Employees with AVIs within the Parking Garage if providing that parking is economically and operationally feasible. In no event will the City ever be required to allocate any parking for City employees for uses contemplated by this Agreement.
- (A) Scheduled Closures: The City will give Developer 10 days' advanced written notice of closures for scheduled maintenance, repairs, or other service. The City will use commercially reasonable efforts to avoid scheduling these types of closures during times of the year that are particularly busy for the Block 2 and 4 Retail Project and to limit the extent and duration of scheduled closures.
- (B) Emergency Closures: The City will give the Developer's Authorized Representative (as defined in Section 5.5 below) email or facsimile notice (to the last email address or facsimile number of which the City has been given written notice) of any emergency maintenance, repairs, or other service as soon as reasonably feasible. Because these closures cannot be reasonably anticipated, the City will have no obligation to avoid scheduling them during times of the year that are particularly busy for the Block 2 and 4 Retail Project, but will be obligated to try to minimize, to the extent feasible given the situation, the extent and duration of these types of closures.
- 2.12 Rules and Regulations: Towing. The City may impose reasonable rules relating to the operation of the Parking Garage, such as speed limits, directional signs and arrows, and

fire lanes. The City may also post signs advising those using the Parking Garage that non-complying vehicles may be towed at the owner's cost. The City may ticket or tow vehicles that do not comply with those rules and regulations, do not comply with applicable law, or do not comply with posted signs.

2.13 **No Alterations.** Developer may not do either of the following without the City's prior written consent, which the City may deny in its sole and absolute discretion:

- (A) Make or authorize any alterations, changes, or improvements to the Parking Garage, or
- (B) Post or install, or authorize anyone else to post or install, any signs or markings in the Parking Garage.

ARTICLE 3

ASSIGNMENT

Developer may assign its rights and obligations under this Agreement to any person or entity to which it assigns its interest in the Block 2 and 4 Retail Project. In such event, Developer will automatically be released from all liability under this Agreement arising from and after the date of that assignment. The City may assign its rights and obligations under this Agreement to anyone to whom it sells or conveys the Parking Garage. In such event, the City will automatically be released from all liability under this Agreement, whether that liability arose before, on, or after the date of that sale or conveyance.

ARTICLE 4

DEFAULT

4.1 **Default by the City:** If the City breaches this Agreement, then Developer may send notice to the City of the occurrence of that breach. If that breach is not cured within 30 days after delivery of that notice (which period of time will be extended to the minimum period of time necessary to cure the breach using all diligence if the breach cannot, by its nature, be cured within 30 days), the breach will constitute a "City default" and Developer will be entitled to exercise all remedies at law or in equity, subject to the City's defenses and immunities that arise from its status as a municipal corporation. However, Developer hereby waives any right it may have to recover from the City any consequential, incidental, special, or punitive damages, including, but not limited to, lost profits or revenues, arising out of any City default or any breach by the City of this Agreement.

4.2 **Default by Developer:** If Developer breaches this Agreement, then the City may send notice to Developer of the occurrence of that breach. If that breach is not cured within 30 days after delivery of that notice (which period of time will be extended to the minimum period of time necessary to cure the breach using all diligence if the breach cannot, by its nature, be cured within 30 days), the breach will constitute a "Developer default" and the

City will be entitled to exercise all remedies under this Agreement, at law, or in equity, subject to the limitations set forth in Section 4.2(B) below.

(A) Fees for Notices of Breach. If any breach of Section 2.5, Section 2.6, or Section 2.7 occurs and the City sends notice of that breach to Developer, then Developer will be obligated to pay the applicable amount set forth below for each such breach. These amounts compensate the City for the additional work that the City must perform in notifying Developer of and addressing the problems arising because of such breach:

- (1) For the first three breaches in any calendar year, \$100 per breach;
- (2) For the next two breaches in any calendar year, \$250 per breach;
- (3) For each breach after five breaches in any calendar year, \$500 per breach.

(B) If the City delivers six or more notices of breach under Section 4.2(A) above in any twelve-month period, then in addition to the fees described in Section 4.2(A) above, the City may, by written notice to Developer, require Developer to prepare and submit a report identifying the causes of the repeated violations and a plan of action to correct the situation. Developer must submit this report and plan to the City within 30 days after the City's notice to Developer requiring the report and plan. The City must be reasonable in evaluating the report and plan. If the City does not approve of the plan, Developer will be required to submit a new plan or new plans until the City is satisfied that the plan has a reasonable likelihood of success. If the City approves a plan, then Developer must implement the plan. If Developer implements the plan, but three or more violations occur during the next-succeeding six month period or six or more violations occur during any 12-month period, then the City may require Developer to again issue a report and design and implement a plan. If Developer fails to provide a report and plan within that 30-day period or if Developer fails to implement the plan once it has been approved, then Developer will be in breach of this Agreement.

(C) Termination. The City hereby waives any right it may have to recover from Developer any consequential, incidental, special, or punitive damages, including lost profits or revenues, arising out of any Developer default or any breach by Developer of this Agreement and, except as set forth in the next sentence, waives the right to terminate this Agreement. The City is entitled to terminate this Agreement if any one or more of the following occurs:

- (1) Any Developer breach of its obligations under Section 4.2(B) above to develop or implement a plan.
- (2) Any Developer default arising from the breach of Section 5.23 or Section 5.24 below.
- (3) Any failure by Developer to pay any amount due under this Agreement.

- (4) Any Post-Closing Developer Default under the DDA.

ARTICLE 5

MISCELLANEOUS

- 5.1 **Notices.** Any notice to be given or to be served upon any party to this Agreement in connection with this Agreement must be in writing, and will be deemed delivered and received when actually received or, if earlier, and regardless of when received (a) three days after being deposited in the United States mail, certified mail, properly addressed, with postage prepaid, or (b) the number of days specified in the contract with a reputable overnight courier service (e.g., one day if sent "next-day" and two days if sent "two day"), if sent by overnight courier service. Any party to this Agreement may, at any time by giving five days prior written notice to the other party to this Agreement designate any other address in substitution of the following address or addresses to which any notices must be given. The current addresses for notices are:

If to the City:

City Manager, City of Austin
City Manager's Office

Physical Address:

301 W. Second Street
Austin, Texas 78701

Mailing Address:

P.O. Box 1088
Austin, Texas 78767-1088
Phone: (512) 974-2200

with a copy to:

City Attorney
City of Austin Law Department

Physical Address:

301 W. Second Street
Austin, Texas 78701

Mailing Address:

P.O. Box 1088
Austin, Texas 78767-1088
Phone: (512) 974-2268

with a copy to:

Building Services Officer
City of Austin Building Services Division

Physical Address:

411 Chicon Street
Austin, Texas 78702

Mailing Address:

P.O. Box 1088
Austin, TX 78767-1088
Phone: (512) 974-3962

with a copy to: Harriet Anne Tabb
Bell, Nunnally & Martin
3232 McKinney Avenue
Suite 1400
Dallas, Texas 75204
(214) 740-1418

If to AMLI: Taylor Bowen
AMLI Residential Properties
2740 North Dallas Parkway, Suite 280
Plano, Texas 75093
Phone: (972) 265-6726

with a copy to: Jackson Walker, L.L.P.
100 Congress, Suite 1100
Austin, Texas 78701
Attention: Kent Smith
Phone: (512) 236-2353

5.2 **Interest:** If either party fails to pay the other party any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of the rate of interest set forth in Section 2251.025 of the Texas Government Code, as it may be amended from time to time, or the maximum rate of interest permitted under applicable law.

5.3 **Attorneys Fees:** If any party to this Agreement institutes any action or proceeding in court or any arbitration or similar proceeding to enforce any provision of this Agreement or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, each prevailing party will be entitled to receive from each losing party all reasonable attorneys' fees and all court costs in connection with those proceedings.

5.4 **Further Assurances:**

(A) **By the City.** In addition to the obligations the City is required to perform under this Agreement prior to or at the Closing, the City agrees to perform any other reasonable acts and to execute, acknowledge, and deliver subsequent to the Closing any other reasonable instruments, documents, and other materials as Developer or the Title Company may reasonably request in order to effectuate the consummation of the transactions contemplated in this Agreement.

(B) **By Developer.** In addition to the obligations Developer is required to perform under this Agreement prior to or at the Closing, Developer agrees to perform any other reasonable acts and to execute, acknowledge, and deliver subsequent to the Closing any other reasonable instruments, documents, and other material as the City or the Title Company may reasonably request in order to effectuate the consummation of the transactions contemplated in this Agreement.

- 5.5 Approvals and Consents: Unless another standard is expressly set forth in this Agreement, the City and Developer may each withhold any approvals or consents required or permitted under this Agreement in the exercise of its sole and absolute discretion. Any consent or approval must be in writing and signed by the party whose consent or approval is required or requested in order for it to be binding upon that party. The City hereby appoints the person who occupies the position of Building Services Officer at the address set forth in Section 5.1 above as the authorized person to whom Developer must submit items requiring the City's execution, approval, or consent (the "City's Authorized Representative"). The City agrees that execution by or approval or consent given by the authorized person to any routine request will be binding on the City, but that more significant approvals, consents, or amendments may require approval by the City Manager or the City Council, or both. Similarly, the Developer hereby appoints Taylor Bowen at the address set forth in Section 5.1 above (the "Developer's Authorized Representative") as the authorized person to whom the City must submit all documents, instruments, or other items requiring the Developer's execution, approval, or consent. The City and Developer may each appoint a different authorized person by written notice to the other. In the City's case, this ability to appoint a different authorized person includes designating a person occupying a different position.
- 5.6 No Waiver: No waiver by either party of any breach of this Agreement may be deemed a waiver of any other breach. No waiver of any breach of this Agreement may be inferred from the action of a party. Any waiver of a breach must be in writing and signed by the waiving party.
- 5.7 Estoppel Certificates: The City and Developer each agree to sign and deliver to the other party a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.
- 5.8 Modifications: No modification, waiver, or discharge of this Agreement is valid unless it is in writing and signed by the parties to this Agreement. Any amendments to this Agreement must be approved by the City Manager and may require approval of the City Council.
- 5.9 Force Majeure: In addition to specific provisions of this Agreement, delays in performance (other than the payment of money) by either party under this Agreement cannot be deemed to be a default where and to the extent that such delays in performance are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation,

unusually severe weather, inability to secure necessary labor, materials or tools, acts of the other party, or any other causes beyond the control (and without the fault) of the party claiming an extension of time to perform. An extension of time for any such cause commences to run from the time of the commencement of the cause and can only be for the period of the actual delay. If any party wishes to claim such extension, that party must send a notice to the other party within 30 days after the delay begins, advising the other party of the delay, the cause of the delay, and the anticipated duration of the delay and must send a notice that the delay has ceased within 30 days after the cessation of the delay. If the party wishing to claim a delay fails to send either such notice, then that party will be deemed conclusively to have waived the right to an extension as a result of that delay.

- 5.10 Severability: If any material provision (as defined below) contained in this Agreement is held by a final non-appealable decision of a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, this Agreement will terminate in its entirety and be of no further force or effect. If any provision contained in this Agreement that does not constitute a material (a "non-material provision") is held by a final non-appealable decision of a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement. This Agreement will be construed as if such invalid, illegal, or unenforceable non-material provision had never been contained in this Agreement. The following provisions constitute "material provisions:" 2.1, 2.5, 2.6, 2.7, 4.1, and 4.2.
- 5.11 Gender, Number, and Inclusivity: Whenever the context requires, the use in this Agreement of (a) the neuter gender includes the masculine and the feminine, (b) the singular number includes the plural, and (c) the use of the words "including," or "includes" or "can include" is deemed to include the phrase, "without limitation," unless the statement specifically states that the term "including" is meant to be limited to the specified items in such statement.
- 5.12 Captions: Captions in this Agreement are inserted for convenience of reference and do not define, describe, or limit the scope or intent of this Agreement or any of its terms.
- 5.13 Exhibits: Any reference to an Exhibit to this Agreement automatically incorporates that Exhibit into this Agreement.
- 5.14 Business Days and Calendar Days: If the last day for performance of an act falls upon a day that is not a Business Day, then the last day for performance will automatically be extended until the next-following Business Day. The term "Business Day" means any day other than a Saturday, Sunday, holidays designated by the City for its employees, or the day after Thanksgiving. Any reference to "days" refers to "calendar days," unless otherwise indicated.
- 5.15 Entire Agreement: This Agreement, together with all other written documents referred to in this Agreement, embodies the entire agreement and understanding between the parties regarding the subject matter of this Agreement. Any and all prior or contemporaneous

oral or written representations, agreements, understandings, or statements not set forth in this Agreement are of no force and effect.

- 5.16 **Authority of Signatories:** Each signatory and party to this Agreement hereby warrants and represents to the other party that it has legal authority and capacity to enter into this Agreement and that all resolutions and other necessary actions have been taken to enable each such signatory and party to enter into this Agreement.
- 5.17 **No Presumption against the Drafter of this Agreement:** No inference, assumption, or presumption can be drawn from the fact that a party or its attorney prepared or drafted this Agreement. It is conclusively presumed that both parties participated equally in the preparation and drafting of this Agreement and were represented by competent counsel.
- 5.18 **Counterparts and Facsimile Execution:** This Agreement may be executed in any number of counterparts, each of which is an original and all of which constitute one and the same document. It is not necessary that the signature or acknowledgment of, or on behalf of, the City or Developer appear on each counterpart. All counterparts collectively constitute one instrument. It is not necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgments of, or on behalf of, the City or Developer. Any signature or acknowledgment page to any counterpart may be detached from a counterpart and attached to another counterpart in order that all signatures and acknowledgments appear on one document, although such action is not necessary to make this Agreement enforceable. The City and Developer intend that any facsimile of a signature to this Agreement will have the effect of an original and it is not necessary to confirm facsimile execution by delivery of the signature page or full or partial version of this Agreement that was transmitted by facsimile.
- 5.19 **Binding Nature of this Agreement:** Subject to the provisions of this Agreement restricting or prohibiting assignment, this Agreement binds and inures to the benefit of the successors and permitted assigns of the respective parties.
- 5.20 **No Third Party Beneficiaries:** This Agreement has been made and is made solely for the benefit of the City and Developer and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies under or by reason of this Agreement on any persons other than the parties to this Agreement and their respective successors and permitted assigns. Nothing in this Agreement relieves or discharges the obligation or liability of any third persons to any party to this Agreement.
- 5.21 **Governing Law:** This Agreement is to be governed by and construed in accordance with the laws of the State of Texas, and the obligations of the parties created under this Agreement are performable in Travis County, Texas. Venue for all purposes is in Travis County, Texas.
- 5.22 **Time:** Time is of the essence in the performance of the parties' respective obligations contained in this Agreement.

- 5.23 Conflicts of Interest: No officer, employee, independent consultant, or elected official who is involved in the development, evaluation, or decision-making process in connection with this Agreement may have a financial interest, direct or indirect, in this Agreement, although this prohibition does not apply to the salaries and benefits City employees receive for their work on this Agreement. Any willful violation of this Section 5.23 constitutes impropriety in office and may result in disciplinary action up to and including dismissal. If Developer knew or should have known of a violation of this Section 5.23 then the City may, among other things, terminate this Agreement.
- 5.24 Warranty Against Payment of Consideration for this Agreement: Developer warrants that it has not offered or given, and will not offer or give, any officer, employee, independent consultant, or elected official any money or other consideration with a view toward securing this Agreement, securing favorable treatment with respect to awarding, amending, or interpreting this Agreement. If Developer has violated or violates this Section 5.24, then the City may, among other things, terminate this Agreement. If Developer has violated or violates this Section 5.24, then the City may, among other things, terminate this Agreement.
- 5.25 Non-Liability for the City: No member, official, or employee of the City is or can be personally liable to Developer or any successor in interest, for any claims arising because of a breach by the City, for any amount which may become due to Developer or to its successor, under this Agreement, or for any obligations under the terms of this Agreement. No partner, officer, director, or employee of the Developer is or can be personally liable to the City or any successor in interest for any claims arising because of a breach by Developer, for any amount which may become due to the City or to its successor, under this Agreement, or for any obligations under the terms of this Agreement.
- 5.26 Relation of the Parties: Nothing in this Agreement may be construed to make the City and Developer partners or joint venturers, make Developer the agent of the City, or render either party liable for any obligation of the other.
- 5.27 Damage. Developer cannot do or permit any one else to do anything that damages or defaces the Parking Garage.
- 5.28 NO SECURITY. THE CITY IS NOT OBLIGATED TO PROVIDE SECURITY FOR THE PARKING GARAGE, MAKES NO REPRESENTATION OR WARRANTY THAT IT WILL PROVIDE SECURITY FOR THE PARKING GARAGE, AND MAKES NO REPRESENTATION OR WARRANTY THAT IF IT DOES PROVIDE SECURITY, WHAT FORM THE SECURITY WILL TAKE AND WHETHER OR NOT THE SECURITY WILL BE EFFECTIVE. PERSONAL PROPERTY LEFT IN PARKED VEHICLES IS AT VEHICLE OWNER'S RISK. THIS AGREEMENT DOES NOT CREATE A BAILMENT AND THE CITY IS NOT A BAILEE

CITY OF AUSTIN

Date: 4/29/05

Approved as to form
[Signature]
Asst City Atty

By: [Signature]
Name: Laura J. Huffman
Title: Assistant City Manager

AMLI AUSTIN RETAIL, L.P.,
a Texas limited partnership

By: AMLI Austin Retail GP, LLC,
a Texas limited liability company
its general partner

By: AMLI Residential Construction, LLC,
a Delaware limited liability company,
its sole member

Date: 4/20/05

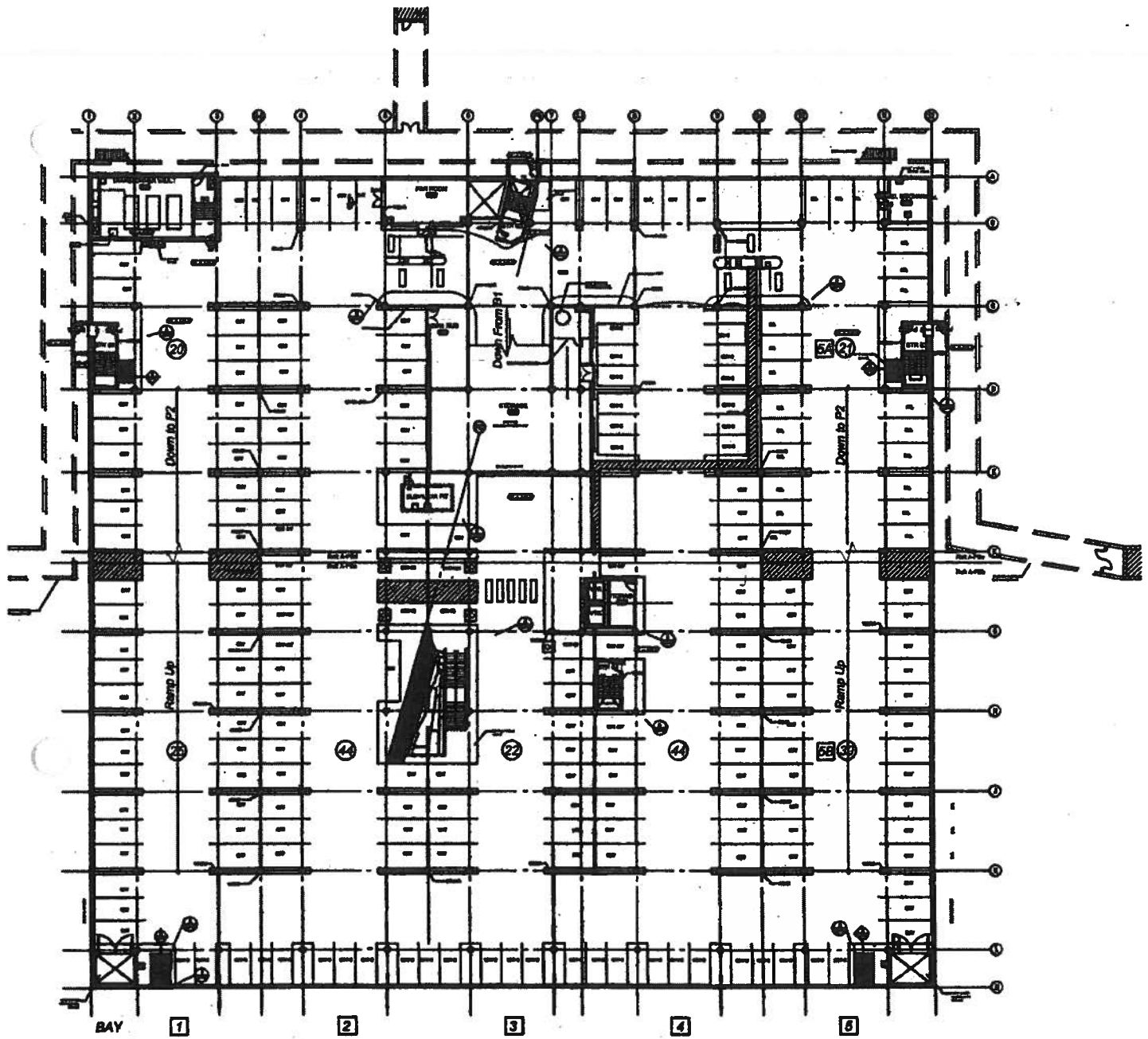
By: [Signature]
Name: TAYLOR BOWEN
Title: Vice President
Date of Signature: 4-20-05

EXHIBIT A

Drawing of 2nd Street District

EXHIBIT B

Drawing of Parking Garage

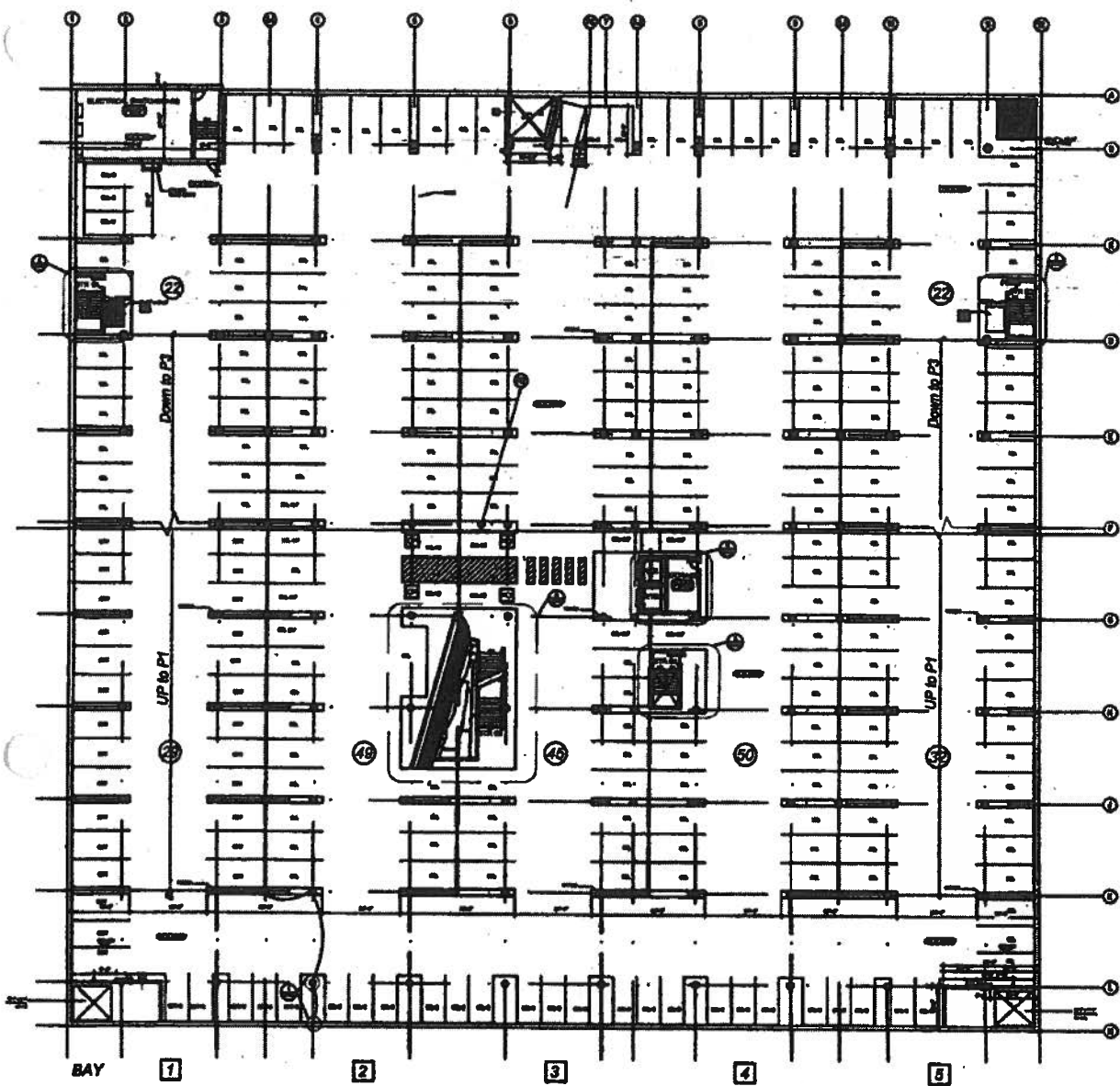


Level P1

06.21.04

Austin City Hall Parking Facility

Scale 1"=50'-0"

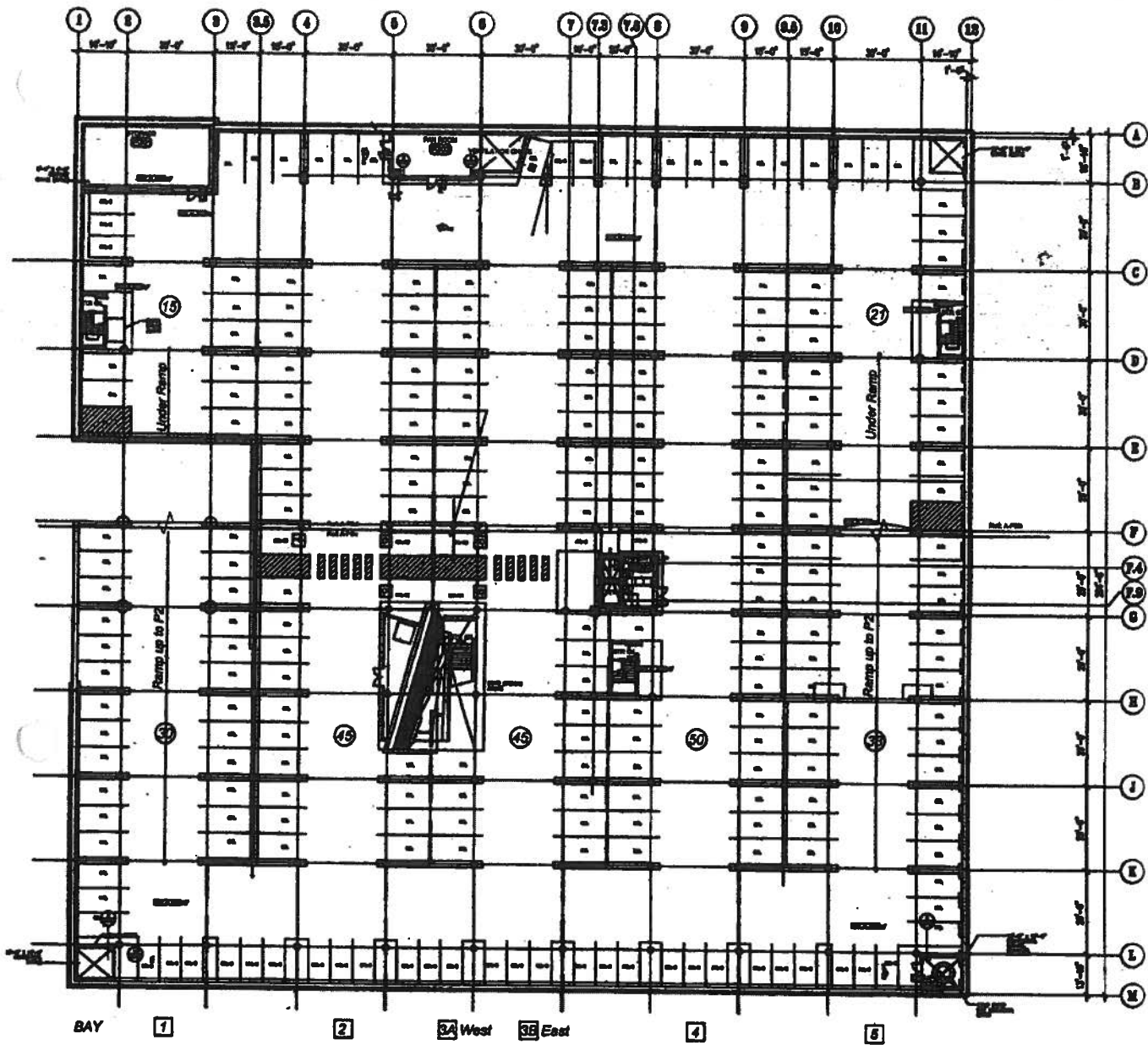


Level P2

Austin City Hall Parking Facility

06.21.04

Scale 1"=50'-0"



Level P3

Austin City Hall Parking Facility

06.21.04

Scale 1"=50'-0"

EXHIBIT C

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EXHIBIT "B"

FIRST AMENDMENT TO PARKING AGREEMENT BETWEEN THE CITY OF AUSTIN AND AMLI AUSTIN RETAIL L.P.

This "First Amendment to Parking Agreement between the City of Austin and AMLI Austin Retail L.P." ("Amendment") is entered into by and between the City of Austin, a Texas home-rule municipal corporation situated in Hays, Travis and Williamson Counties acting by and through its duly authorized City Manager or his designee ("City"), and AMLI Austin Retail, L.P., a Texas limited partnership ("AMLI Retail"). The "Effective Date" of this Amendment is January 1, 2011.

Previously, the City and AMLI Retail ("Parties") entered into a "Parking Agreement" ("Agreement") on or about April 20, 2005 which set out parking privileges in the City Hall garage on Block 3 for retail patrons, retail employees and valet operations connected with the retail business in Blocks 2 and 4. Section 2.5 of the Agreement, "Public Parking; Validation", expires on December 31, 2010.

On December 16, 2010, the City Council authorized the negotiation and execution of an amended agreement with AMLI Retail related to parking privileges for retail patrons, retail employees and valet operations connected with the retail businesses on Blocks 2 and 4 while using the City Hall Parking Garage on Block 3. The Parties wish to extend the existing validation agreement for a single ninety (90) day period until the Parties finalize and execute the amended agreement.

AMENDMENT

The Parties are currently negotiating a new parking agreement regarding the 2nd Street Retail District. Until that amended agreement is finalized, the Parties replace the existing paragraph 2.5(C) (*Public Parking; Validation*)¹ in the Agreement with the following.

- (C) The City has agreed to provide two hours of Validation for patrons of the Block 2 and 4 Retail Project during Standard Days and Council Meeting Days. If and only if, the City charges its standard parking rates on Weekend Days, then the City will provide two hours of Validation for patrons of Block 2 and 4 Retail Project during Weekend Days. If the City institutes a different parking rate for Weekend Days (for example, if the City institutes a flat rate), then the City will not honor any Validations on Weekend Days. The City's agreement to engage in a validation program under this Amendment is extended for a single ninety (90) day period, from January 1, 2011 through March 31, 2011.

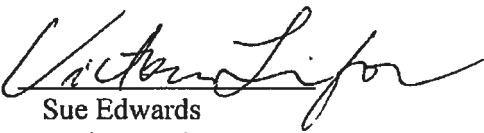
ALL OTHER TERMS AND CONDITIONS IN THE AGREEMENT REMAIN IN FULL FORCE AND EFFECT.

¹ The Parties do not intend to replace subparagraphs (1) -(5) of 2.5(C). Those subparagraphs (1) - (5) of 2.5(C) remain in full force and effect.

Pursuant to Section 5.18 (*Counterparts and Facsimile Execution*) of the Agreement, this Amendment may be signed in multiple counterparts, both of which together shall constitute a single original.

The Parties have executed this Amendment on the dates indicated below, to be effective January 1, 2011.

CITY OF AUSTIN, a Texas
home-rule municipal corporation

By: 
Sue Edwards
Assistant City Manager

Date: Dec. 29, 2010

AMLI AUSTIN RETAIL, L.P., a
Texas limited partnership

By: **AMLI Austin Retail GP, LLC**,
a Texas limited liability company
its General Partner

By: **AMLI Development Construction,
LLC**, a Delaware limited liability
company, its sole member

By: _____

Date: _____, 2010

Pursuant to Section 5.18 (*Counterparts and Facsimile Execution*) of the Agreement, this Amendment may be signed in multiple counterparts, both of which together shall constitute a single original.

The Parties have executed this Amendment on the dates indicated below, to be effective January 1, 2011.

CITY OF AUSTIN, a Texas
home-rule municipal corporation

By: _____
Sue Edwards
Assistant City Manager

Date: _____, 2010

AMLI AUSTIN RETAIL, L.P., a
Texas limited partnership

By: **AMLI Austin Retail GP, LLC**,
a Texas limited liability company
its General Partner

By: **AMLI Development Construction,**
LLC, a Delaware limited liability
company, its sole member

By: _____
Taylor Bowen
EVP

Date: 12-20, 2010

EXHIBIT "C"

INSURANCE REQUIREMENTS FOR CITY CONTRACTS

Contractor agrees to procure the required insurances coverages and deliver evidence of such coverages to the City. Contractor shall have, and shall require all subcontractors of every tier providing services under this Agreement to have, Standard Insurance meeting the General Requirements as set forth below and sufficient to cover the needs of Contractor and/or Subcontractor pursuant to applicable generally accepted business standards. Depending on services provided by Contractor and/or Subcontractor(s), Supplemental Insurance Requirements or Alternate Insurance Options shall be imposed as follows:

I. General Requirements.

The following requirements (A-J) apply to the **Contractor and to Subcontractor(s) of every tier** performing services or activities pursuant to the terms of this Agreement. Contractor acknowledges and agrees to the following concerning insurance requirements or evidence of such coverages applicable to Contractor and Contractor's Subcontractor(s):

- A. The minimum types and limits of insurance indicated below shall be maintained throughout the duration of the Agreement.
- B. Insurance shall be written by companies licensed in the State of Texas with an A.M. Best rating of B+ VII or higher, or the equivalent in financial ratings.
- C. Prior to commencing work under this Agreement, the required insurance shall be in force as evidenced by a Certificate of Insurance issued by the writing agent or carrier or other evidence of coverage acceptable to City of Austin Risk Management. A copy of the Certificate of Insurance or evidence of the required coverages shall be forwarded to the Human Services Administration Unit upon request. Execution of this Agreement will not occur until such evidence of insurance has been provided and accepted by the City.
- D. Certificates of Insurance or other acceptable evidence of coverages shall include the endorsements outlined below and shall be submitted to the Human Services Administration Unit. The Certificate(s) shall show the City of Austin Agreement number and all endorsements by number.
- E. Insurance required under this Agreement which names City of Austin as Additional Insured shall be considered primary insurance policies for all claims against the City of Austin.
- F. Insurance limits shown below may be written as primary or structured using primary and excess or umbrella coverage that follows the form of the primary policy.
- G. City shall be entitled, upon its request and without expense, to receive certified copies of policies and endorsements or other acceptable evidence of coverage.
- H. City reserves the right to review insurance requirements during any term of the Agreement and to require that Contractor make reasonable adjustments when the scope of services has been expanded.
- I. Contractor shall not allow any insurance to be cancelled or lapse during any term of this Agreement. Contractor shall not permit the minimum limits of coverage to erode or otherwise be reduced. Contractor shall be responsible for all premiums, deductibles and self-insured

retention. All deductibles and self-insured retention shall be shown on the Certificates of Insurance.

- J. Insurance coverages specified in this Agreement are not intended and will not be interpreted to limit the responsibility or liability of the Contractor or Subcontractor(s).
- K. The City will accept endorsements providing equivalent coverage if the insurance carrier or risk pool does not use the specific endorsements indicated below.

II. Specific Requirements

The following requirements (II.A - II.D, inclusive) apply to the **Contractor and to Subcontractor(s) of every tier** performing services or activities pursuant to the terms of this Agreement. Contractor acknowledges and agrees to the following concerning insurance requirements applicable to Contractor and Contractor's Subcontractor(s):

A. Workers' Compensation and Employers' Liability Insurance

- 1. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act.
- 2. Employers' Liability limits are
 - \$100,000 bodily injury each accident
 - \$100,000 bodily injury by disease
 - \$500,000 policy limit
- 3. Policies under this Section shall apply to State of Texas and include the following endorsements in favor of City of Austin:
 - a. Waiver of Subrogation (Form 420304)
 - b. Thirty (30) day Notice of Cancellation (Form 420601)

B. Commercial General Liability Insurance

- 1. Minimum limits:
 - \$500,000* combined single limit per occurrence for coverage A and B.
- *Supplemental Insurance Requirement
If eldercare, childcare, or housing for clients is provided,
the required limits shall be: \$ 1,000,000 per occurrence
- 2. The Policy shall contain or be endorsed as follows:
 - a. Blanket contractual liability for this Agreement
 - b. Products and Completed Operations
 - c. Independent Contractor Coverage
- 3. The Policy shall also include the following endorsements or endorsements providing equivalent coverage in favor of City of Austin:
 - a. Waiver of Subrogation (Form CG 2404)
 - b. Thirty (30) day Notice of Cancellation (Form CG 0205)
 - c. City of Austin named as additional insured (Form CG 2010)

4. If care of a child is provided outside the presence of a legal guardian or parent, the Contractor shall provide coverage for sexual abuse and molestation for a minimum limit of \$500,000 per occurrence.

C. The policy shall be endorsed to cover injury to a child while the child is in the care of the Contractor or Subcontractor.

D. Business Automobile Liability Insurance

1. Minimum limits:

\$500,000 combined single limit per occurrence

- a. If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$1,000,000 per occurrence.
- b. If no transportation services of any type are provided, and use of a motor vehicle is strictly limited to travel to and from work or work sites, evidence of Personal Auto Policy coverage with limits of: \$100,000/\$300,000/\$100,000 may be provided in lieu of Business Automobile Liability Insurance.

2. The Policy shall also include the following endorsements or endorsements providing equivalent coverage in favor of City of Austin:

- a. Waiver of Subrogation (Form TE 2046A)
- b. Thirty (30) day Notice of Cancellation (Form TE 0202A)
- c. City of Austin named as additional insured (Form TE 9901B)

E. Professional Liability Insurance

Coverage shall be provided with a minimum limit of \$500,000 per claim to cover negligent acts, errors, or omissions arising out of Professional Services under this Agreement.

F. Blanket Crime Policy Insurance

If an advance against Agreement Funds is requested or received in an amount greater than \$5,000, a Blanket Crime Policy shall be required with limits equal to or greater than the sum of all Agreement Funds allocated by the City. Acceptance of alternative limits shall be approved by Risk Management.

G. Directors and Officers Insurance

Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than twenty-four (24) months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement or evidence of prior acts or an extended reporting period acceptable to the City may

be provided. The Contractor shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

H. Property Insurance

If the Agreement provides funding for the purchase of property or equipment, Contractor shall provide evidence of all risk property insurance for a value equivalent to the replacement cost of the property or equipment.